

THE
EXCESS PROFITS TAX ACT, 1940
WITH THE
EXCESS PROFITS TAX ORDINANCES
AND
THE FINANCE ACTS OF 1941, 1942, 1943 AND 1944

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" Excess profits taxation is a necessary war measure but its effects can go far beyond its announced purpose to raise revenue. It must not be allowed to damage our social fabric beyond repair because in winning the war we might lose the fruits of the peace if we destroy by taxation our industry, our trade, our commerce and our business, which are responsible in a large part for our magnificent war effort ".

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PREFACE TO THE FIFTH EDITION.

This edition is more or less a reprint of the Fourth Edition incorporating the legislative measures affecting excess profits tax enacted since the publication of the Fourth Edition, *viz.*, The Excess Profits Tax (Amendment) Ordinance, 1944, The Finance Act, 1944, and the Amendments to the Excess Profits Tax (Post-War Refunds) Rules, 1942, and the Excess Profits Tax Rules, 1940. The amendments made by these enactments have been incorporated in the body of the text, and the enactments are also printed at the end of the book for easy reference.

15th June, 1944.

A. N. AIYAR.

PREFACE TO THE FIRST EDITION.

Referring to the Finance (No. 2) Act of 1915 and the subsequent Finance Acts of the United Kingdom dealing with excess profits duty, Lord Sterndale once observed: "I must say that in all this legislation, and in all these Acts with which we have to deal, it does seem as if the framers have done their very best, and done it with very conspicuous success, to raise difficulties on the construction of the Act, and as if, if they had only considered the matter perhaps a little more, the sections might have been made so plain that the taxpayer would know whether he was taxed or not, and no court would have any dealing with the legislation."

Fortunately, the Finance (No. 2) Act of 1939 of the United Kingdom on which our Act is based was framed by one of the greatest lawyers of the British Empire*—by one, who, to use his own words, 'could at one time almost repeat the sections of the Finance (No. 2) Act of 1915 in his sleep', who was often engaged in expounding its scheme to quite a large number of His Majesty's Judges in the years after the last war, and who was fully aware of its defects.

As the Indian Legislature has purposely, and in our opinion wisely, adhered to the scheme and wording of the Finance (No. 2) Act of 1939 wherever possible, the objects and reasons of the provisions enacted in the said Act are freely referred to in this Commentary. Though the decisions referred to in the notes are cases which arose in connection with the Finance (No. 2) Act of 1915, most of them deal with general principles applicable to excess profits tax and are equally applicable to the present Acts.

Questions of income-tax and excess profits tax arise more often outside the courts, in the course of the administration of the Act by the authorities concerned, and it is of the utmost importance that the public as well as officers of the department should be aware of the objects with which particular provisions are enacted and the sense in which the Government have understood them. Extracts from the debates in the House of Commons, the Indian Legislative Assembly and the Council of State are therefore referred to in the notes to the sections. We have no doubt that the statements made by Sir John Simon (now the Lord Chancellor) before the House of Commons on the principles underlying the various sections will be of invaluable help to the public.

1st January 1941.

A. N. AIYAR.

S. V. AIYAR.

* Sir John (now Viscount) Simon, the Lord Chancellor

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THE EXCESS PROFITS TAX ACT, 1940

(ACT No. XV of 1940).

*Received the assent of the Governor-General on the
6th April, 1940.*

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities ;

It is hereby enacted as follows :

1. (1) This Act may be called the Excess Profits Tax Act, 1940.
- Short title, extent
and commence-
ment. (2) It extends to the whole of British India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

The preamble.—The preamble to the Act refers to the three main characteristics of excess profits tax which distinguish it from income tax, namely, (i) that it is a tax on excess profits only, (ii) that it is imposed only in respect of profits of certain businesses, and (iii) that it is a temporary tax levied on profits arising in the conditions prevailing during the present hostilities. The first characteristic of the tax is well described by Lord Hanworth, M.R., in these words : "It is a tax designed to catch a portion of the amount which is deemed by the Legislature to be in excess of the normal profits of the trade or business." : *Birt, Potter & Hughes Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 976 at p. 990).

Income-tax is levied in respect of all kinds of income, namely, (i) salaries, (ii) interest on securities, (iii) income from property, (iv) profits and gains of business, profession or vocation, and (v) income from other sources. Excess profits tax is confined in its operation to profits arising out of business. Though the words used are 'certain businesses', the general scheme of the Act is to tax all trades and businesses and not to pick out particular kinds of business for taxation. In his speech introducing the Finance (No. 2) Act of 1939, Sir John Simon said : "The excess profits tax, therefore, will fall upon trades and businesses generally. I wish to say that I have not recommended exceptions from that general application. When we were dealing with national defence contribution it was not a contribution on excess profits but from profits

as such and we did make certain exceptions. For instance, we made an exception in favour of statutory undertakings and some others. That was because it was a tax simply upon profits. But here there is a tax on additional or excess profits. If there be excess profits made by any firm or business enterprise, even a statutory undertaking, I see no reason why this excess profits tax should not apply to it. I hope the committee will support me in the general view that this provision ought to be applied without exception to all trades and businesses". An amendment was moved before the House of Commons to exclude statutory undertakings but was withdrawn after discussion: See *House of Commons Debates*. The Indian Legislature has however exempted one particular kind of business from the operation of excess profits tax, *viz.*, the business of life insurance: See Sec. 4, Proviso.

The expression 'profits arising out of' is not wider than the usual words 'profits of' and does not extend the scope of the Act to indirect profits which are not strictly profits of the business. The expression 'profits arising from' is freely used in the Indian Income-tax Act in the sense of 'profits of', *e.g.*, in Sec. 4, sub-sec. (3), clauses (iii) and (viii).

The last point to which the preamble refers is that excess profits tax is levied on excess profits which arise in the conditions prevailing during the present war and these words were added in the preamble by the Select Committee so that it may contain a definite reference to this aspect of the Act. The liability of profits to excess profits tax accordingly arises only from the 1st September, 1939. It has to be noted however, that though excess profits tax is levied on profits which accrue in war conditions, it is not restricted to profits which accrue as a direct result of the war.

Preambles in general.—As to the proper use of the preamble in construing an Act the following principles are well established. The preamble of an Act usually states or professes to state the intention of the Legislature in passing the Act. It is a key to open the meaning of the makers of the Act and can be consulted in case of doubt as an index to the intention of the Legislature. The preamble cannot, if the language of the Act is clear, either extend or cut down the express provisions of the Act, but where ambiguous phraseology is used in the body of the Act the preamble may be referred to to resolve the ambiguity. It is not part of the Act but a mere recital and cannot override the Act.

Short title.—The earlier Acts of England and India imposed an excess profits *duty*. The present Acts impose an excess profits *tax*. Though economists may detect some shade of difference between a *duty* and a *tax*, there does not appear to be much importance in this change in nomenclature for practical purposes.

The short title of an Act, unlike the preamble, is part of the Act, and can be referred to in construing the meaning of doubtful portions of the Act though it cannot restrict the meaning of a section where there is no ambiguity: *Pemsel's Case* (3 Tax Cas. 53).

Extent of the Act.—The Excess Profits Tax Act, 1940, extends to the whole of British India. *British India* is defined in the General

Clauses Act, 1897, as amended by the Government of India (Adaptation of Indian Laws) Order, 1937. After 1st April 1937, it means all territories for the time being comprised within (i) the Governors' Provinces, *viz.*, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the N.W.F. Province, Orissa and Sind, and (ii) the Chief Commissioners' Provinces, *viz.*, British Baluchistan, Delhi, Ajmere-Merwara, Coorg, and the Andaman and Nicobar Islands and the area known as Panth Piploda. *Burma* and *Aden* are not parts of British India. There is, however, a special provision in Sec. 6 (5) with regard to the inclusion of profits earned in Burma before separation in computing standard profits. With regard to *British Baluchistan* though it is included in British India, there is a special provision in Sec. 95 of the Government of India Act that no Act of the Federal Legislature shall apply to it unless the Governor-General by public notification so directs. The Excess Profits Tax Act, 1940, and the subsequent Amendment Acts have been extended to British Baluchistan by Notifications of the Governor-General under Section 95 of the Government of India Act: see Notification No. 13-W dated 26th June 1940, Notification No. 224-N dated 19th December 1940 and Notification No. 51-F dated 1st April 1941, and Notification No. 207-F dated 29th Nov, 1941, printed *infra*.

The Income-tax Act, 1922, is wider in its extent, as it applies further, within the Indian States and tribal areas to British subjects who are in the service of the Crown or of a local authority and to all other servants of the Crown in the said States and areas.

Commencement of the Act.—The notification contemplated by subsec. (3) was published in the *Gazette of India* of the 13th April, 1940, and the Act came into force on that date.

Excess Profits Tax (Amendment) Act, 1940.—Section 1 (1) of the Excess Profits Tax (Amendment) Act, 1940, provides that its provisions shall be deemed to have taken effect on the day on which the Excess Profits Tax Act, 1940, came into force.

Excess Profits Tax (Amendment) Act (XI of 1941).—The Excess Profits Tax (Amendment) Act, 1941, came into force on the 31st March, 1941, the day on which it received the assent of the Governor-General.

Excess Profits Tax (Second Amendment) Act (XXIV of 1941).—This Act came into force on the 26th November 1941, but contains a proviso that Sec. 3 thereof which exempts profits accruing in Indian States from taxation shall not be given effect to in the making of any assessment for any year before the year ending on 31st March 1943.

The Indian Finance Acts of 1942, 1943 and 1944.—The Indian Finance Acts of 1942, 1943 and 1944 have also introduced some amendments and additional provisions relating to Excess Profits Tax Act, 1940.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) “accounting period” in relation to any business means—

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods ;

(b) in any other case, such period as the Excess Profits Tax Officer may determine :

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922 ;

The definition.—Section 22 of the Finance (No. 2) Act of 1939 provides that the accounting periods of a trade or business shall be determined in the same manner as the accounting periods of a trade or business are directed by sub-section (2) of Section 20 of the Finance Act, 1937, to be determined for the purposes of the national defence-contribution. Section 20, sub-sec. (2), of the Act of 1937 which is referred to runs as follows :

“(2) For the purpose of the national defence contribution, the accounting periods of a trade or business shall be determined as follows :—(a) in a case where the accounts of the trade or business are made up for successive periods of twelve months, each of those periods shall be an accounting period ; (b) in a case where the accounts of the trade or business have been made up as aforesaid but have ceased to be so made up, the accounting periods from the end of the last period of twelve months for which they were so made up shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine ; (c) in any other case the accounting periods of a trade or business shall be such periods not exceeding twelve months as the Commissioners of Inland Revenue may determine.”

The Indian Legislature has mainly followed the English definition with the omission of clause (b). But it has added a further provision that when the Excess Profits Tax Officer determines the period under clause (b) of the Indian Act (which corresponds to clause (c) of the English Act) he shall have regard to the period, if any, which is or has been determined as the previous year for that business for the purposes of the Indian Income-tax Act. Under the English as well as the Indian definition when the accounts are made up for successive periods of 12 months, each of such periods must be taken as the accounting period and it is not open to the Excess Profits Tax Officer to fix any other period.

‘Making up’ of accounts.—There are two reported decisions under the English Act of 1915 which throw some light on what constitutes ‘making up’ of accounts. The Finance (No. 2) Act of 1915 provided that the accounting period shall be taken to be the period to which the accounts of the trade or business have been made up. The accounts of a company were made up and audited as at 31st August each year. Stock was taken only then, but the books of the company

were totalled every month and balanced every quarter in the books. For excess profits duty the Commissioners held that the accounts were made up on the 31st August of each year and took the year ended 31st August 1914 as the first accounting period. The company claimed that their accounts were made up quarterly and therefore computation must be based on yearly accounts ended 31st May 1914, such accounts being constructed from an aggregate of quarterly accounts in which the stock values were estimated. Rowlatt, J., held that the question was one of fact and the Commissioners' decision could not be interfered with, and his judgment was affirmed by the Court of Appeal (Lord Sterndale, M.R., Atkin, L.J., and Younger, L.J.): *James Cycle Co. Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 98). In the second case the accounts of a company were made up and audited as at 31st August each year, stock being taken only at that date. The company got annual accounts for the years ended 31st July 1913, 1914 and 1915 prepared by auditors from the books by adjustment in respect of the accounts prepared for the month of August each year. The books of the company had been totalled every month. Rowlatt, J., held that the books of the company had not been actually made up to any date other than 31st August and that the Commissioners were right in treating the first accounting period as the year ended 31st August 1914. He said that the reference to the period for which accounts had been 'made up' in Section 38 of the Finance (No. 2) Act of 1915 referred to the *de facto* practice of the firm or company. With reference to what constitutes making up of accounts the learned Judge said: "No doubt the books, if looked at by persons with the necessary knowledge, contained the materials for finding out the profits for those months but the books had not been made up within the meaning of this section as the Commissioners held, and I certainly agree with them. Adding up a book is not making it up for this purpose because you make it up in order that the profits may be readily ascertained from the making up, which means something more than adding up and something more than entering." : *John Marston Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 106 at p. 112).

Chargeable accounting period—For the definition of 'chargeable accounting period' see Section 2, clause (6), *infra*.

(2) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under Section 3 ;

Appointment and duties.—Appellate Assistant Commissioners of Excess Profits Tax must be persons exercising the powers of Appellate Assistant Commissioners of Income-tax. They are appointed by the Central Board of Revenue and their functions are also defined by the Board. But they are not under the control of the Board in the exercise of their appellate functions, for, Section 3 (4) provides that no orders, instructions, or directions shall be given by the Central Board of Revenue so as to interfere with the discretion of the Appellate Assistant Commissioners in the exercise of their appellate functions.

(3) “average amount of capital” means the average amount of capital employed in any business as computed in accordance with the Second Schedule ;

Importance of the definition.—The determination of the average amount of capital employed in a ‘business’ is necessary for computing the standard profits : (See Section 6). In calculating standard profits if there is an increase or decrease of capital in the chargeable accounting period the average amount of capital employed during the standard period and the chargeable period has to be ascertained and the standard profits have to be increased or decreased by applying the statutory percentage to the amount of such increase or decrease. Again, in the cases of businesses in respect of which a standard period is not available and businesses started after the 31st day of March 1936 which have an option, the standard profits have to be calculated by applying the statutory percentage to the average amount of capital.

The Second Schedule.—The Second Schedule referred to in this clause contains, among others, rules relating to (i) the valuation of assets of the business not consisting of money, (ii) borrowed money and debts, (iii) investments, (iv) special rules as to shipping and (v) as to cases where part only of the profits is taxable under the second and third provisos to Sec. 5 of the Act (i.e., in the case of income of non-residents and persons not ordinarily resident and income accruing in States).

(4) “Board of Referees” means a Board of Referees appointed under Section 3 ;

Constitution.—Sub-sec. (5) of Sec. 3 lays down that a Board of Referees should consist of not less than three and not more than five persons of whom not less than one-half are non-officials having business experience and one a senior judicial officer who has held office for not less than 10 years. Subject to this the Central Government is empowered to make rules relating to the formation, composition and procedure of Boards of Referees. Rules have been framed and the provisions of the Rules are considered below at p. 7.

Not subject to Central Board of Revenue.—There is a special provision in sub-sec. (4) of Sec. 3 that the general rule laid down in that sub-section that all officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue shall not apply to the Board of Referees.

Functions of the Board.—The main functions of the Board of Referees are (i) to determine under Sec. 6, sub-sec. (3), of the Act, the standard profits on an application made to it in cases in which during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected. In such cases it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks

just ; (ii) it will also hear appeals (a) under Sec. 8 (5) ; (b) under the proviso to sub-section (8) of Section 8 ; and (c) under rule 11 of Schedule I. Sub-section (3) of Section 6 is based on sub-sec. (7) of Sec. 13 of the Finance (No. 2) Act of 1939 but it is worthy of note that the Finance Act of 1940 of the United Kingdom has considerably amplified the powers of the Board of Referees. With regard to the scope of the amendment introduced by the Finance Act of 1940 the Chancellor of the Exchequer (Sir John Simon) in his Budget Speech said :

“ There is one class of amendment which is of such importance that I ought to mention it now. It has to do with Sec. 13, sub-sec. (7), of the Finance (No. 2) Act. That sub-section confers powers on the Board of Referees to allow a substituted standard when the figures of past profits would not constitute a reasonable standard. This particular provision was intended to deal with cases of hardship. It was not intended, and it will not be intended, to lay down an alternative standard of general application ; all that will remain in principle as it was ; but I am satisfied that we must amend the wording of that sub-section in order that it may properly carry out the purpose for which it was framed. In particular, we must see that any new wording provides adequately for concerns belonging to depressed industries, or concerns which in the standard period were still in the process of development. In addition I must meet the legitimate criticism that the limitation of that sub-section in ordinary cases to a percentage calculated in relation to share capital, without having any regard to the financial structure of the company, is not one that can be defended as fair between one company and another. These changes will not, I hope, create controversy, because they are recognised as being called for in order to make a reasonable standard. I propose, therefore, that the machinery of the Board of Referees shall be available in the case of all concerns for which the profits of the standard years were so low as not to constitute a reasonable standard. There will be particular provisions in the case of industries suffering from depression in the pre-war years, so as to ensure that adequate standards will be available. Where the share capital does not adequately represent the trading assets, the real value of those assets will be taken into account in computing the substituted standard.” : See *House of Commons Debates*.

Boards of Referees Rules.—Under Sec. 3 (6) of the Act the Central Government has framed certain rules relating to the formation, composition and procedure of Boards of Referees. The rules are called the Excess Profits Tax (Boards of Referees) Rules, 1940. The main provisions prescribed by the Rules relate to :

- (i) *Panel of the Board* : The Central Government will by notification in the Official Gazette constitute a panel of persons eligible for appointment to the Board and may in like manner from time to time, nominate to or remove from the panel such persons as it thinks fit.
- (ii) *Formation of the Board* : On receipt of an application under Sec. 6 (3) or of an appeal under Sec. 8 (5), or the proviso to sub-sec. (8) of Sec. 8, or under rule 11 of Schedule I, the Commissioner shall appoint a

Board from the panel and shall refer the application or appeal to it for decision. (iii) *Objection to appointment*: The applicant under Section 6 (3) or any party to an appeal is entitled to object to the appointment of any particular member or members of the Board and the Commissioner may in his discretion cancel the appointment and appoint another if he is satisfied that there are reasonable grounds for such objection. Such objection should be taken before the first hearing and the Commissioner's decision thereon is final. (iv) *Procedure*: The members will elect their own chairman. The decision will be according to the views of the majority of the members present (the Chairman having a casting vote), and it will be embodied in a report which will be signed by all the members. Dissenting members may record their dissent. No decision signed by less than half the members constituting the Board will be valid. (v) *Absence of members*: The proceedings of the Board will not be invalid merely by reason of the absence of a member.

Forms of appeal to the Board of Referees—See Rules 8, 11, 11A, 11B, and Forms E.P. 14, E.P. 8A, E.P. 28A and E.P. 29A of the Excess Profits Tax Rules, 1940.

(5) “business” includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investment or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

English law.—This definition modifies the definition of ‘business’ contained in the Indian Income-tax Act in the light of the provisions contained in Section 12, sub-sections (3), (4) and (5) of the English Act of 1939 which run as follows: “(3) The carrying on of a profession by an individual or by individuals in partnership shall not be deemed to be

the carrying on of a trade or business to which this section applies if the profits of the profession are dependent wholly or mainly on his or their personal qualifications. Provided that for the purpose of this subsection the expression profession does not include any trade or business consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts. (4) Where the functions of a company or society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this section to be a business carried on by the company or society. (5) All trades or businesses to which this section applies carried on by the same person shall be treated as one trade or business for the purposes of this part of this Act."

It will be seen on a comparison of the definition in the Indian Act and the provisions of the English Act quoted above that the law is substantially the same in England and India, though with regard to professions, the Indian Legislature has attempted to improve upon the wording of the English Act.

The Definition—The definition *first* lays down the ordinary connotation of the term business, namely, that it includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture; *secondly*, it lays down when and under what conditions a profession is business for the purposes of the Act; *thirdly*, it includes within the term business, the business of investment companies; and *fourthly*, it prescribes the manner in which separate businesses are to be treated. These topics are dealt with below in the order stated above. The position of offices and employments which are not expressly dealt with in this definition or elsewhere in the Act will also be considered at the end.

1. Ordinary meaning of business.—The first part of this definition is the definition of business contained in the Indian Income-tax Act. The ultimate source of the definition is to be found in Case I of Schedule D of the English Income-tax Act of 1842 which was headed 'duties to be charged in respect of any trade, manufacture, adventure or concern in the nature of trade' and in Section 237 of the English Income-tax Act of 1918 which provided that 'trade includes every trade, manufacture, adventure, or concern in the nature of trade.' The word 'business' 'is only a convenient way of expressing a trade, manufacture, adventure or concern in the nature of trade': *Per* Finlay, J., in *St. Aubyn's Estates Ltd. v. Strick* [1932] (17 Tax Cas. 412).

It has been repeatedly pointed out by eminent English Judges that it is not possible to lay down definite lines to mark out what is a business or a trade or an adventure, and to define the characteristics of each, nor is it necessary or wise to do so. The nature of the enterprise has to be determined on the facts of each particular case in the light of the statement of principles contained in the judicial decisions and the manner in which they have been applied to concrete instances. The leading case in India which expounds the fundamental conception

underlying a business is the decision of the Judicial Committee in *Shaw Wallace & Co.'s Case* [1931] (59 I.A. 206). Referring to the definition of business contained in Section 2 (4) of the Indian Income-tax Act, their Lordships said: 'The words used are no doubt wide but *underlying each of them is the fundamental idea of the continuous exercise of an activity.*' Continuing, their Lordships said: "Under Section 10 the tax is payable by an assessee under the head business in respect of profits or gains of any business *carried on by him.* Again, their Lordships think, the same central idea; the words italicised are an essential constituent of that which is to produce the taxable income; it is to be the profits earned by a process of production." [For further comment on what constitutes business and the purport of the decided cases see notes under Section 4 which deals with the charge of tax and *A. N. Aiyar's Commentary on the Indian Income-tax Act*].

II. Professions : Scheme of the Act.—The scheme of the Indian Act is to include professions generally within the term 'business', to exempt professions carried on by an individual or individuals if the profits thereof depend wholly or mainly on his or their personal qualifications, and to exempt from this exemption professions consisting wholly or mainly in the making of contracts on behalf of other persons, or giving of advice of a commercial nature in connection with the making of contracts. This method of grafting exceptions on exceptions was adversely commented upon by English judges in a case decided on the Act of 1915 but still the same procedure continues.

History of the law.—The Act of 1915 exempted "... (b) offices or employments; and (c) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount." In the English Act of 1939 and the Indian Act of 1940 two improvements have been made: (i) the vague condition about the capital being small, which existed in the earlier Act has been abandoned, and (ii) the exemption has been expressly confined to professions carried on by an individual or by individuals in partnership so as to remove the doubts that had been entertained under the earlier Act about companies carrying on professions. It was strongly urged before the House of Commons that all occupations should be brought within the tax. Sir John Simon repelled this suggestion on three grounds: (i) that if we did apply the proposal to all individuals it would really be in the nature of a third general tax inasmuch as individuals if they have large incomes are the target of a special tax, the sur-tax, (ii) that in employments and professions earnings naturally grow, and (iii) this would involve an enormous extension of the examination of individual cases and the results to the revenue may not be commensurate with the labour and additional work involved: See *House of Commons Debates*.

What is a profession.—In *Maxse's Case* (12 Tax Cas. 41 at pp. 61, 62) Lord Justice Scrutton, after expressing his reluctance finally to

propound a comprehensive definition, said: "It seems to me, as at present advised, that a 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or if any manual skill, as in painting and sculpture or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale, or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions—the Church, Medicine and Law. It has now a wider meaning." Again, in *Currie's Case* (12 Tax Cas. 245) the same learned Judge said: "It is impossible to lay down any strict legal definition of what is a profession because people carry on such infinite varieties of trades and businesses that it is a question of degree in nearly every case whether the form of business that a particular man carries on is or is not a profession" (p. 264). In another passage he said: "Indeed, if I were invited to define exhaustively as a matter of law what a profession was I should find the most enormous difficulty in doing it." In *Durant's Case* (12 Tax Cas. at p. 245) Rowlatt, J., remarked: "If a man carries on the occupation of advising people upon purely commercial matters he is not a professional man; on the other hand, if he confines himself to advising on matters that depend upon intellect he is clearly a professional man."

Whether a person carries on a profession is a question of fact.—With regard to the nature of the question whether a man is carrying on a profession or not, Lord Sterndale, M. R., said in *Currie v. Commissioners of Inland Revenue* (12 Tax Cas. 245): "I do not know that it is possible to give a positive answer to that question because it must depend upon the circumstances with which the Court is dealing. There may be circumstances in which nobody could arrive at any other finding than that what the man was doing was carrying on a profession; and therefore, taking it from the point of view of a judge directing a jury, or any other tribunal which has to find the facts, the judge would be bound to direct them that on the facts they could only find that he was carrying on a profession. That reduces it to a question of law. On the other hand, there might be facts on which the direction would have to be given the other way. But between those two extremes there is a very large tract of country in which the matter becomes one of degree; and where it becomes a question of degree, it is then undoubtedly, in my opinion, a question of fact; and if the Commissioners come to a conclusion of fact without having applied any wrong principle, then their decision is final upon the matter." That it is not quite easy to apply the rule to particular facts is clear from the subsequent passage in the judgment of the Master of Rolls where he said: "in this case Rowlatt, J., took the view that the facts were so clear that the matter was a question of law. I cannot agree with that and I cannot reconcile it with the same learned judge's judgment in the case of *Hugh Cecil v. Commissioners of Inland Revenue* (36 T.L.R. 164)". In the same case [*Currie's Case* (supra)] Scrutton, L. J., expressed his opinion on the point thus:—

"I do not say that all the authorities on the subject have been consistent. I rather agree with Lord Parker in the case of *Farmer v. Cotton's Trustee* (6 Tax Cas. at p. 600), when he said: "The views from time to time expressed in this House have been far from unanimous. I think the reason is, as has been suggested by the Master of the Rolls, that there has been a very strong tendency arising from the infirmities of human nature in a Judge to say, if he agrees with the decision of the Commissioners that it is fact, and if he disagrees with them, that it is law, in order that he may express his opinion the opposite way. Undoubtedly, the less a Judge has tried cases with juries, the greater is the tendency on his part to think that the view he forms on the evidence is the only possible one; but when he has tried innumerable cases with juries and continually finds twelve reasonable and intelligent men taking a different view of the evidence from that which he himself takes, he becomes more and more convinced that there may be in many states of the facts more than one possible view of the evidence, and that the fact that he would have taken a different view does not show that the view taken by the twelve persons was necessarily wrong": *Currie v. Commissioners of Inland Revenue* [1921] (12 Tax Cas. 245 at p. 262). After referring to *Smith's Case* [1914] (3 K.B. 674 at pp. 682 and 683) where he had dealt with this subject, Scrutton, L.J., continued: "I think, therefore, in considering the question in this case, that if there is any evidence on which the Commissioners could come to the view that this particular gentleman did not carry on a profession, their decision is final and the fact that on that evidence I might have come to a different conclusion is absolutely immaterial, -because I am not the judge of fact, but only of law. They are the judges of fact, and whether a man carried on a profession is in the last resort a question of fact. The reason why it appears to me to be so is this. In my view it is impossible to lay down any strict legal definition of what is a profession, because people carry on such infinite varieties of trades and businesses that it is a question of degree in nearly every case whether the form of business that a particular man carries on is, or is not, a profession. Accountancy is of every degree of skill or simplicity. I should certainly not assent to the proposition, that as a matter of law every accountant carries on a profession, or that every accountant does not. The fact that you may have some knowledge of law does not, in my view, settle whether a thing is a profession or not. Take the case that I put during the argument, of a forwarding agent. From the nature of his business he has to know something about Railway Acts, about classes of risk that are run in sending goods in a particular way, and under particular forms of contract. It may or may not be sufficient to make this a profession. Other people may require rather more knowledge of law, and it must be a question of degree in every case. Take Mr. Justice Rowlatt's case of the photographer, *Cecil v. The Commissioners of Inland Revenue* (36 T.L.R. 164). Art is a matter of degree, and to settle whether an artist is a professional man again depends, in my view, on the degree of artistic work that he is doing. All these cases which involve questions of degree seem to me to be eminently questions of

fact, which the Legislature has thought fit to entrust to the Commissioners, who have at any rate, from their very varied experience, at least as much knowledge, if not considerably more, of the various modes of carrying on trade, than any judge on the Bench."

Membership of organised professions.—In deciding whether a person carries on a profession, the fact that he is a member of an organised profession is of some weight. On this point Scrutton, L. J., said (12 Tax Cas. at page 235) as follows:—"I myself am disposed to attach some importance in findings as to whether a profession is exercised or not, to the fact that the particular man is a member of an organised profession with a recognised standard of ability enforced before he can enter it, and a recognised standard of conduct enforced while he is practising in it. I do not say it settles the matter, for a moment, but if I were deciding a question of profession I should attach some importance to that particular feature, and, as I have said, it is facts for them."

Exempted professions.—Though professions are generally included in the term business for the purposes of excess profits tax, professions carried on by an individual or by individuals in partnership are exempted if the profits of the profession depend wholly or mainly on his or their personal qualifications. The conditions for exemption are (i) that the profession should be one carried on by an individual or by individuals in partnership and (ii) it must further be such that its profits depend wholly or mainly on his or their personal qualifications. The first condition excludes professions carried on by incorporated bodies like companies. Even under the Act of 1915 it was held that companies cannot claim exemption under this provision inasmuch as in the case of a company the profits cannot be dependent on the company's personal qualifications for the simple reason that a company is incapable of personal qualifications and the fact that the profits depend on the personal qualification of the principal person of the company or its employees is irrelevant as the business is carried on by and the profits belong to the company and not to its shareholders or employees: *William Esplen, Son & Swaniston Ltd. v. Commissioners of Inland Revenue* [1919] (2 K. B. 731) and *Commissioners of Inland Revenue v. Peter Mc Intyre* [1926] (12 Tax Cas. 1006). In fact, the first condition was held to follow necessarily from the second. The present Acts have however removed all doubts on the point. The second condition for exemption of professional earnings is that the profits must depend wholly or mainly on the personal qualifications of the individual or individuals carrying on the profession. Personal qualifications do not mean personal exertions, for though the proprietor of a firm leaves much of the work to be done by his staff of employees the profits will be exempt if they depend mainly on his qualifications, e.g., as a solicitor, accountant, or engineer. It has also to be observed in this connection that the mere fact that profits depend on personal qualifications will not necessarily make an occupation a professional occupation. It must first be established that the occupation is a profession: *Barber &*

Sons v. Commissioners of Inland Revenue, [1919] (2 K.B. 222 at p. 228). In order to satisfy this condition the individual or individuals by whom the profession is carried on must obviously be identical with the individual or individuals on whose personal qualifications the profits are mainly dependent: *Per* Lord President (Clyde) in *Peter McIntyre's Case* [1926] (12 Tax Cas. 1006). It is not enough if it depends on the personal qualifications of the employees: *Per* Lord Sands (*Ibid.*, p. 1015).

Special occupations considered.—The nature of the following occupations have been considered in the decided cases:—

Accountants.—With regard to accountants, Scrutton, L.J., said in *Currie's Case* (12 T. C. 245): "I should certainly not assent to the proposition that as a matter of law every accountant carries on a profession or that every accountant does not."

Artist photographer.—In *Hugh Cecil v. Commissioners of Inland Revenue* (36 T.L.R. 164), a photographer claimed that his photography was so artistic that he was in the rank of a professional man. The Commissioners held that he was not and Rowlatt, J., refused to interfere as he was of opinion that the conclusion was a finding of fact which could not be questioned inasmuch as there were considerations purely of fact and of appreciation of fact and of degree on one side or the other which had to be weighed one against the other in order to ascertain what was his exact level in the ladder which leads from the purely mechanical to the artistic region. Referring to this case Lord Justice Scrutton said: "Art is a matter of degree, and to settle whether an artist is a professional man again, depends, in my view, on the degree of artistic work that he is doing. All these cases which involve questions of degree are eminently questions of fact." See also *Crooke's Case* (1930 S.C. 721).

Auctioneers, surveyors, estate agents.—The position of surveyors, auctioneers and estate agents and their liability to pay Excess Profits Duty under the Act of 1915 was raised between the Commissioners of Inland Revenue and the Surveyor's Institution and the Auctioneers' and Estate Agents' Institute of the United Kingdom in 1919 and after some negotiations an arrangement was entered into between the parties. This was embodied in an instruction issued by the Commissioners of Inland Revenue which ran as follows:—

"1. Income derived from remuneration in respect of sales of land and house whether by private treaty or by auction (including advice, etc., upon the sale), and

"2. Income derived from rent collection combined with estate management:

"One-half of the income in each case to be regarded as derived from professional work and to be excluded from the computations except in such cases where such would be manifestly inequitable.

"3. Salaries received by Sectional Chairmen appointed under the Meat Control Order, 1917, and grading fees received by auctioneer members of grading Committees appointed under the same Order, less the expenses incurred in connection therewith. The whole of the income to be excluded from the computations.

"4. Commissions received by Deputy Chairmen under the Meat Control Order, 1917, less expenses, and

"5. Receipts in respect of all sales of moveable property whether by private treaty or auction, less expenses. To be separately distinguished in each case in the accounts of the recipients and 25 per cent. of the net income excluded from the computations.

"It should be noted that, in all these cases, the profits to be excluded are to be arrived at after deducting the appropriate expenses.

"These arrangements, which take effect from the commencement of the Finance (No. 2) Act, 1915, apply strictly within the respective limits of the classes of business as defined and have, therefore, no application to remuneration in respect of insurance business etc." (See 12 Tax Cas. pp. 1008–1009).

Boarding school.—Persons carrying on the profession of a boarding preparatory school were held entitled to the benefit of the exception and not chargeable to excess profits duty.—*INLAND REVENUE COMMISSIONERS v. NORTH AND INGRAM* [1911] (2 K.B. 705). Sankey, J., has laid down the principles underlying Section 39 (c) of the Act of 1915 in this case.

Forwarding agent.—Referring to forwarding agents, Scrutton, L.J., said: "The fact that you may have some knowledge of law does not in my view, settle whether a thing is a profession or not. Take the case of a forwarding agent. From the nature of his business he has to know something about Railway Acts, about the classes of risk that are run in sending goods in a particular way and under particular forms of contract. It may or may not be sufficient to make this a profession".—*CURRIE'S CASE* (12 Tax Cas. 245).

Income-tax Advisor.—A person carried on the work of an income-tax repayment agency and the ordinary work of an accountant for several years. He was not a member of

an organised professional body but had a chartered accountant as a member of his staff. He was paid by a fixed fees for his accountancy work and portion of his income-tax and excess profits tax work but often charged a percentage on the amounts of relief secured by him. The Special Commissioners held that he did not carry on a 'profession' but a 'business' and his profits were liable to excess profits duty. Rowlatt, J., reversed this decision holding that on the facts the question was one of law and he had the right to interfere. The Court of Appeal called for clearer findings of fact and, the Commissioners having found that the person was not carrying on a profession, the Court of Appeal declined to interfere with this finding.—*CURRIE v. COMMISSIONERS OF INLAND REVENUE* (12 Tax Cas. 245).

Insurance broker.—A person was the founder and a member of the Council of the Corporation of Insurance Brokers. He carried on the work of an insurance broker, mainly connected with fire insurance. He had to survey and make plans of the premises to be insured, he gave advice on structural alterations which would reduce insurance premiums, negotiated with insurance companies and settled the terms of insurance. He received the premiums from the assured and paid them to the companies deducting his commission. He was not an agent of any Insurance company. The Commissioners decided that he was not carrying on a 'profession' within the scope of the exemption in Section 39 (o) of the Finance (No. 2) Act, 1915, and that he was an 'agent' within the meaning of the last portion of that section. Rowlatt, J., held that the question was one purely of degree and how one estimates and appreciates the various elements of fact which combined to make the case, and declined to interfere with the finding of the Special Commissioners. The Court of Appeal agreed with Rowlatt, J. As the question was one of fact and there was evidence on which the Commissioners could have arrived at their conclusion, the Court had no authority to interfere.—*DURANT v. COMMISSIONERS OF INLAND REVENUE* (12 Tax Cas. 245).

Journalist and editor.—A journalist whose contributions have any literary form, as distinguished from a reporter, exercises a 'profession' and the editor of a periodical comes in the same category; *Maxse's Case* (12 Tax Cas. 41). But the proprietor of a newspaper or periodical controlling the printing, publishing and advertising but not responsible for the selection of the literary or artistic contents does not exercise a 'profession,' but a trade or business other than a profession.—*MAXSE'S CASE* (12 Tax Cas. 41).

Naval architect.—Naval architecture was held to be a profession but the claim for exemption was disallowed on the ground that a company cannot have personal qualifications.—*WILLIAM ESPLEN, SON & SWAINSTON LTD. v. COMMISSIONERS OF INLAND REVENUE* [1919] (2 K.B. 731).

Stockbroker.—Stockbroking is not a profession for purposes of excess profits duty.—*BARBER & SONS v. COMMISSIONERS OF INLAND REVENUE* [1919] (2 K.B. 222).

Departmental instructions.—The Central Board of Revenue have issued the following instructions with regard to special classes of professions. The charge does not apply to the great majority of the professions and the following should be treated as without the scope of the charge: Accountants, Architects, Artists, Authors, Barristers, Consulting Engineers, Doctors, Fire Assessors, Insurance Assessors, Patent Agents, Private Schools, Quantity Surveyors, Solicitors, Surgeons. But the following are not exempt: Stockbrokers, Stockjobbers, Insurance Brokers, Bookmakers, Publicity Agents, Racehorse Trainers, Ship Brokers: *Notes and instructions* para 18.

The business of letting or selling of properties and or the collection of rents, the sale of property by auction or the surveying or valuation of property in connection with sale or purchase or mortgage, auctioneers, estate, house or land agents and surveyors and dealers are therefore assessable.

Making of contracts.—To the exemption conferred on professions which depend upon personal qualifications, the legislature has engrafted an exemption and the result is that professions consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts will be included in the definition of business. It was held in *Barber & Sons v. Commissioners of Inland Revenue*,

[1919] (2 K.B. 222) that stock-broking is not a profession for purposes of excess profits duty under the Act of 1915. The Act of 1939 has expressly inserted a proviso to Section 12 (3) that the expression 'profession' shall not include any trade or business consisting wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts. The Indian Act follows this proviso. The words used are wide enough to cover insurance brokers and agents. Rowlatt, J., observed in *Currie's Case* (12 Tax Cas. at pp. 254-255): 'if a man carries on the occupation of advising people upon purely commercial matters—that is not confined, I think, merely to buying and selling—he is not a professional man' and the legislature has adopted this principle.

III. Investment companies.—Having dealt with professions the definition turns to investment companies and lays down that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of investment or property shall be deemed to be a business carried on by such company or society. The provision applies only to companies and incorporated societies and does not apply to individuals, firms, Hindu undivided families or associations of individuals. Consequently, generally speaking, the holding of investments and property or the letting out of property by private individuals will not come within the Act: *Legislative Assembly Debates*. The word 'property' includes immoveable property and the object of this provision is to bring income from immoveable property also within the Act where such property is held by companies whose main function is holding such property. Investment trust companies, estate companies, property owning companies etc., are chargeable to excess profits tax: *Notes & Instructions* para 16.

'Company' is defined in Section 2, sub-sec. (8), and does not include foreign companies which are not recognised by the Central Board of Revenue; but, if the words 'by or under any enactment' in this clause are intended to apply to 'company' also, the section may cover such companies also. In the *Notes and Instructions* the expression is assumed to apply to 'company' also: para 16.

The test of liability of investment companies is whether their 'functions' consist wholly or mainly in the holding of investments or other property and not whether their income is derived wholly or mainly from such sources. There may be cases where the functions of the company may not consist wholly or mainly in holding investments, though in a particular year most of its income may have been received from investments. 'Functions' does not necessarily mean the original objects of the company but the actual work done by it at the material time. Hence, if a company ceases to trade and functions only to receive income from investments it comes within the proviso.

The question whether the functions of a company or society consist wholly or mainly in the dealing in or holding of investments is a

question of fact. In *Irish Catholic Church Property Insurance Co., Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 13) the paid up capital of an insurance company was £20,000 and its total reserve fund in investments was £ 25,968 in addition to the statutory deposit of £ 20,000 but it appeared that the total risks insured by the company exceeded £ 12,000,000. It was held that the company was not one whose principal business consisted in making investments. In *Lincoln Wagon and Engine Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 494) a company dealing in railway wagons, owing to decrease in the volume of its business, had to put in most of its accumulated money in War Loans and Treasury Bills with the intention of realising them when required for new purchases. The company contended that its principal business was the holding of investments. The Commissioners held otherwise. Sankey, J., said this was a question of fact for the Commissioners to decide and declined to interfere with their finding. *Commissioners of Inland Revenue v. Tyre Investment Trust Co.* (12 Tax Cas. 646) is a case in which it was held that the principal business of the company consisted of making investments and that it was liable to pay excess profits duty. The *Notes and Instructions* provide that if there is doubt as to whether a company is within this provision the matter must be referred to the Excess Profits Tax Adviser.

Rule 20 of the Excess Profits Tax Rules deals with the method of assessing Investment companies.

IV. Separate businesses.—Under the Excess Profits Duty Acts of the United Kingdom and India separate businesses, though carried on by the same person, were assessed separately to excess profits duty. That was the practice in the United Kingdom and executive instructions were issued in India to the effect that a similar practice should be adopted here: see *Commissioner of Income-tax, Madras v. Govindaswami Naidu* (1 I.T.C. 174). The U.K. Finance (No. 2) Act of 1939 however distinctly provided that all trades or businesses carried on by the same person shall be treated as one trade or business for the purpose of excess profits tax [Sec. 12 (5)]; and the Indian Act of 1940 similarly provides [Sec. 2 (5)] that all businesses to which the Act applies carried on by the same person shall be treated as one business for the purposes of the Act. This is subject to the provision contained in the last proviso to Sec. 5 that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident, accrues or arises in British India, then except where the business, being the business of a person not ordinarily resident in British India, is controlled in India, the Act shall only apply to such part of the business and such part shall be deemed to be a separate business.

An important effect of the rule that all businesses carried on by the same person should be treated as one is that losses of one business will be automatically set off against the profits of another. But the advantage of having a separate untaxable minimum of Rs. 36,000 for each separate business is lost.

Under this clause only businesses to which the Excess Profits Tax Act applies can be consolidated. Whether a business is one to which

the Act applies has to be determined with reference to Section 2 (5) which defines 'business' for the purposes of the Act, and Section 5 which lays down when the Act applies to a business falling within the definition of Section 2 (5). The other condition for consolidation is that it should be carried on *by the same person*. 'Person' is defined in Section 2 (17) as including a Hindu undivided family, and in the General Clauses Act, 1897, which applies to all Acts, as including any company, or association or body of individuals, whether incorporated or not. The expression thus covers (i) individuals, (ii) companies, (iii) firms and other associations or body of individuals, and (iv) Hindu undivided families. It follows that a business carried on by an individual cannot be consolidated with a business carried on by him in partnership with others. Nor can a business carried on by A, B & C in partnership be clubbed with a business carried on by A and B as partners. The unit of assessment is the business and not the person. A parent company and a subsidiary company are not the 'same person' for the purposes of this clause. Their relationship is regulated by special rules. When different businesses which were commenced on different dates are treated as one, difficult questions may arise about the date of commencement of the business.

Mixed activities.—Though the present Acts have thus got over the difficult questions that arose under the earlier Acts as to whether particular concerns were separate businesses or branches of a single business, a business may be combined with other untaxable activities like agriculture and it may be necessary to separate the profits of the business from the profits from the other source. The rule to be applied to such cases was first stated by Sankey, J., in the case of *William Ransom & Son Ltd.*, (12 Tax Cas 21). In this case the assessee company carried on the business of manufacturing chemists and herb growers. A certain quantity of the produce of the land was also sold to the public. On being assessed to excess profits duty in respect of the whole of its profits, the company claimed that the profits arising from the growing of herbs and other produce should be deducted. The Commissioners found that part of the activities of the company was a business of husbandry and, as it was possible to separate such business from the rest of the company's business, allowed the company's claim, and their decision was upheld by the High Court. Sankey, J., laid down the law on the point in these words:

"I can conceive cases where the two branches of a person's business—and in a person I include company—are so interlaced that it is quite impossible to separate them or to disintegrate them; and I can conceive, although I am not expressing any definite opinion upon that point, that where you have such a case and where the main and substantial portion of the person's business is of a character bringing it within the excess profits duty, it would be impossible to separate that part of the business chargeable from the part of the business not chargeable, and therefore that the whole would become assessable. There again I speak with hesitation as this is a new Act of Parliament—I think that it would very much depend upon the facts of the case which

way it would ultimately fall. It is quite easy to clear one's mind by the illustration of an individual who carries on two businesses one of which is liable to excess profits duty and the other is not. It might be more difficult to determine a case where the one business is ancillary and incidental to the other in such a way as to make the disintegration a matter, if not of impossibility, of difficulty. It seems to me that the same considerations apply to a company. I have not forgotten the dictum of Lord Parker to which I was referred by Mr. Finlay in *Mitchell v. The Egyptian Hotels Company, Limited* (6 Tax Cas. 542 at p. 550; [1913] A.C. 1022, at page 1038) where he says:—"The trade or business we have to consider is a trade or business from which profits or gains can arise and not the business of disposing of and dividing such profits and gains when they have arisen, and I can see no reason why a corporation any less than an individual should not be engaged in more than one trade or business at the same time." Continuing, Mr. Justice Sankey said as follows: "I think if a company were engaged in two entirely separate businesses it would be clear that they might be assessable to excess profits duty in respect of (a) and not in respect of (b). Where, as I have already pointed out, the businesses converge and are subsidiary one to the other, the difficulty begins, but the difficulty is a question which to my mind is largely of fact, and where it is possible, as it seems to be in this case, to disintegrate and divide the businesses, I think, if you can separate the one from the other and find that the one so separated comes within the exception of the Act, there is nothing in law to prevent that being done."

The principle laid down in the abovesaid case was followed in the case of *Commissioners of Inland Revenue v. Maxse* (12 Tax Cas. 41; 1919, 1 K.B. 647) in which Swinfen Eady, M.R., said: "The proper course to be followed where a trade or business liable to the duty is carried on in connection with a trade or business not so liable was decided by Mr. Justice Sankey in *Commissioners of Inland Revenue v. Willam Ransom & Son Ltd.* Where it is possible to separate one business from the other, so as fairly to arrive at the separate profits of the taxable business this should be done, and there is nothing in law to prevent it being done." In this case a journal was owned, edited and published by the same person and the business of publishing the magazine was separated from the profession of journalist and editor, and the profits of the former were ordered to be separately assessed after debiting a proper sum for the owner's personal contributions and work as editor. Their Lordships said that this was the only method of fairly giving effect to the statute. Scrutton, L.J., has dealt with the subject of separation of businesses in some detail in this case.

The question of separation next came up for consideration in *Mills from Emelie Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 73). A lady who carried on a millinery business left the business, and her business premises were pulled down. She handed over to some of her saleswomen order books containing the names of customers who had effected business through the saleswomen with a view to help them to make new business. Three of these commenced business in the same

street and took in some of the old employees. No assets, stock, book debts, contracts or liabilities of the old business were however, taken over. It was held that the new company had not become the owner of the old company but had set up a new business altogether and should be assessed to excess profits tax. Rowlatt, J., said that it was a perfectly plain case of a business not having changed ownership because it had been dissolved and the customers had been divided amongst new people. Referring to *Maxse's case* and the argument that there was change of ownership of part of the old business, Rowlatt, J., said that you can look at the occupation of Maxse as a writer as apart from the business of which he was the owner and that was very intelligible. But that does not mean that where a business is split up not according to categories but really only according to customers, that is to say, it is dissipated, then it is a change of ownership of part of the business which corresponds to those customers who go to the new shop.

The rule in *Maxse's case* was considered and explained again in *Commissioners of Inland Revenue v. Turnbull, Scott & Co.* [12 Tax Cas. 749]. A firm carried on business as shipbrokers and managers of ships and received a commission as remuneration. They undertook the management of certain neutral ships which were commandeered by the Government and received a fixed annual sum as remuneration for their services. It was held by the Court of Appeal (reversing the judgment of Rowlatt, J.) that there was no evidence upon which it could be held that the management of the neutral ships was a separate trade. On the question of separation of business activities and the rule in *Maxse's case*, Pollock, M.R., said in this case: "when one comes to look at the principle which underlies *Maxse's case* it is clear that there must be something in the nature of a wholly different business, severable and severed, in order to apply the doctrine therein laid down."

V. Offices and Employments.—Offices and employments were expressly exempted by the Act of 1915 from excess profits duty. Under the present English and Indian Acts also they are exempt provided they do not come within the definition of 'business'.

Employment and Profession distinguished.—The difference between a trade or profession on the one hand and employment on the other was stated by Sir Wilfrid Greene, M.R., in a recent case as follows: "There is an inherent difference between a trade and profession on the one hand and an employment on the other, where one is considering what is the source of the income. Trades and professions are, so to speak, based on activity, either by the persons carrying on the trades or the persons carrying on the professions. They are not attached to some specific contract, and accordingly in the case of trades and professions it is impossible to put a finger on a particular contract as the source of the income. The profits of the profession and the profits of the trade come from the general state of activity of the trader or the professional man, and having regard to the fact that trades and professions are not to be divided up. If a doctor carries on his profession in England and abroad you cannot treat that as being two professions: he is carrying on one profession. Similarly, a trader who carries on a trade in England and

also abroad is carrying on one trade assuming that it is the same trade and not a distinct trade....But in the case of an employment different considerations arise. Employment arises from a contract of employment and therefore, there is, what there is not in other cases, some definite contract to which to look when you are inquiring into the source of the income which it is sought to charge": *Bennett v. Marshall* [1938] (1 K. B. 591; 107 L.J.K.B. 319; 54 T.L.R. 320).

Selling Agents.—Whether a person is carrying on a trade or profession or is merely engaged in an office or employment may sometimes be difficult to determine in particular cases inasmuch as the line which marks offices and employments on the one hand from business on the other, is not very clear. The business of a man may include an office or employment involving a payment by commission in respect of transactions or services rendered: *per Rowlatt, J.*, [1920] (1 K. B. 70). And an office or employment may involve the carrying on of a business by the man who holds the office or employment. A person who is remunerated for services either wholly or partly by commission or who may in one sense of the word be described as an agent, if he be merely rendering those services or acting as agent in that way as an assistant of a business of somebody else, a business which does not belong to him and of which he does not take the profits, does not carry on a business: *per Lord Sterndale, M.R.*, [1920] (2 K.B. at p. 682). It is also clear that a salesman in a shop or any mercantile business, who is remunerated as salesman wholly or partly by commission does not carry on a business. He is employed in a certain capacity, and he is employed in a business, with the profits of which he has nothing whatever to do except so far as his remuneration may possibly be based upon them: (*ibid.*, p. 682). The manager of a multiple shop does not carry on the business of a multiple shop. He only carries on the business of the owner of the multiple shop so far as his branch is concerned and he is an assistant in the carrying on of that business: *ibid.*, p. 683). The word 'business' cannot refer to the occupation of a mere whole-time servant: (*per Rowlatt, J.*, in [1920] (K.B. 70) approved by Lord Sterndale, M.R., in [1920] (2 K.B. 677 at 683). On the other hand, a man may carry on the business of an agent or carry on the business of a person remunerated for services by commission. It is not impossible that a person who was rendering services only to one other person, that is, who has to give his whole time to that business might not be carrying on a business, but it is a very strong factor in coming to the conclusion that the man is a servant, that he has to devote his whole time to the employer. Another test of whether a man is a servant or an agent is whether he has control over the money: (*ibid.*, p. 686). In *Burt v. Commissioners of Inland Revenue* [1919] (2 K.B. 650) the taxpayer carried on the business of providing secretarial staff and offices for various companies and it was held that he was carrying on a trade. In *Radcliffe v. Commissioners of Inland Revenue* (89 L.J.K.B. 267) the taxpayer's business was to act as manager and shipbroker to various single ship companies. These cases were distinguished by Scrutton, L.J., in a latter case on the ground that the agents in these cases had a business of their own wider than the business of any particular employer. An example of

a person who was held to be a whole time servant is to be found in *Robbins v. Inland Revenue Commissioners* [1920] (2 K.B. 677), a decision of the Court of Appeal affirming the decision of Rowlatt, J., [1920] (1 K.B. 51). Here a person was, under a contract entered into between himself and a foreign company, bound to give his whole time to selling their goods in England for a remuneration by way of commission on the sales. It was held that he did not carry on a trade or business but was only a whole time servant of the company and he was not liable in respect of his occupation to be assessed to excess profits duty. In a case which arose under the Indian Excess Profits Duty Act, 1919, the assessee carried on business at Bombay as agents of the Aurangabad Mills Co., Ltd., situated in the Hyderabad State and were entitled to receive from the company a remuneration of 10 per cent. of the net annual profits of the company for their services as their agents subject to a minimum of Rs. 12,000 per annum. They claimed exemption from excess profits duty under Clause (2) of Schedule I of the Excess Profits Duty Act, 1919. It was held that persons in the position of the assessee acting as agents, secretaries and treasurers or agents of a Mill company under the usual form of agreement and remunerated by a commission depending on the out-turn or the amount of profits could not be said to carry on a business excepted under the said clause, nor were they whole time officers or servants and they were therefore liable to pay excess profits duty: *Doraiswami Iyer & Co., In re* [1921] (I.L.R. 45 Bom. 1064; 23 Bom. L.R. 609; 63 I.C. 735; 1 I.T.C. 93).

Selling agents: Departmental Instructions.—Persons who sell goods for manufacturers or other principals are within the charge to E.P.T. under Sec. 4 if they carry on a business within the definition contained in Sec. 2 (5) of the Act, irrespective of whether they are remunerated for their services either by salary or by commission or by both salary and commission. Normally such a person should be regarded as carrying on a business except where his relation with his principal is that of master and servant. This relationship depends upon the existence of a contract or agreement of *service*, as contrasted with a contract for *services* which may give rise to the relationship of principal and agent or of two independent principals. Broadly it may be said that a contract which gives one person, the employer, the power of controlling the actions of another person so that the latter is bound both as regards the work he is to do and the manner in which it is to be done is a contract of service.

There was a motion in England that even offices and employments should be brought within the tax but this was rejected: See *House of Commons Debates*.

(6) “chargeable accounting period” means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1945,* and

* 1944 was changed to 1945 by the Finance Act of 1944.

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

Source of the definition.—‘Chargeable accounting period’ is defined in the U. K. Finance (No. 2) Act of 1939 in Sec. 22, (the Interpretation section) of Part III of the Act. This definition was bodily adopted in our Excess Profits Tax Bill, but the Select Committee thought it desirable that legislation of this kind should be subjected to periodical review by the Legislature. They considered various expedients which might secure this end without involving the re-enactment annually of the elaborate provisions relating to machinery, and finally adopted the expedient of altering the definition of “chargeable accounting period”, so that at the end of March, 1941, unless by an amending Act that date was extended, the taxing provisions would cease to have effect. They also made a change in Section 4 to secure that before that date, and thereafter annually at the time the Finance Bill is before the Legislature, the Legislature shall have an opportunity of re-considering the rate at which the tax is charged. (See *Select Committee Report*).

Section 8 of the Finance Act, 1941, amended this section by substituting the words and figures “31st day of March 1942” for the words and figures “31st day of March 1941”. Finance Act of 1942 altered 1942 to 1943, and the Finance Acts of 1943 and 1944 made similar amendments to extend the duration of the tax. The duration of tax has thus been extended up to 31st March 1945. Similar annual extensions may be expected until it is decided to stop the levy of excess profits tax.

When there are two or more businesses.—Where two or more businesses are treated as one under Sec. 2 (5) and the accounts for these are made up at different dates there can be only one series of chargeable accounting periods and the accounting period of one business should be taken and necessary apportionments should be made on the time basis under the second proviso to Rule I of Sch. I. This rule applies also to businesses with different branches adopting different accounting periods: *Notes and Instructions*, para 23.

‘Accounting period’.—This definition must be read with the definition of ‘accounting period’ in Section 2, cl. (1), *supra*.

(7) “Commissioner” means a person appointed to be a Commissioner of Excess Profits Tax under Section 3 ;

Appointment of Commissioners.—For the Notification under Section 3 appointing Commissioners see *infra* Rules and Notifications.

(8) “company” means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law

of an Indian State, and includes any foreign association whether incorporated or not which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

The definition.—This definition differed from the definition of company in the Indian Income-tax Act in two respects : (i) it included companies formed in pursuance of a law of an Indian State, (ii) with regard to foreign associations which the Central Board of Revenue may declare to be a company, the expressions ‘ carrying on business in India ’ and ‘ whether its principal place of business is situated in British India or not ’ were omitted. With regard to this difference the Government spokesman in the Legislative Assembly (Mr. S. P. Chambers) agreed that there was no reason why there should be a difference in the matter between the two Acts but said that the definition in the Income tax Act has been found to be defective and that a suitable opportunity will be taken to put that right and to bring the definition in the Income-tax Act also into line with that in the Excess Profits Tax Act. The nature of the defect in the definition in the Income-tax Act and the reasons for amending the definition are stated in some detail in the speech of Mr. Chambers in the *Legislative Assembly*. The Income-tax Amendment Act of 1940 has since amended the original definition and removed the defect referred to and the definitions in the two Acts are now the same.

Foreign associations.—The Central Board of Revenue has by Notification No. 14 dated the 29th March 1941 declared that all foreign associations which are for the time being declared to be companies for the purposes of Sec. 2 (6) of the Indian Income-tax Act, are companies for the purposes of the Excess Profits Tax Act also.

(9) “ deficiency of profits ” means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits ;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ;

Source of the definition.—This definition is taken verbatim from sub-section (1) of Section 15 of the English Act of 1939. The rule as to deficiency of profits was formulated in England in Section 38 (3) of the Finance (No. 2) Act of 1915 and further altered by Section 45 (2) of the Finance Act of 1916 and Section 22 (1) of the Finance Act of 1917 and is now contained in Section 15 of the Act of 1939.

Loss.—Means ‘ loss ’ as computed in the same manner as profits are to be computed for the purposes of this Act. See Section 2, clause (16) *infra*. It does not include capital loss.

Substantive provisions.—Substantive provisions of the Act relating to the granting of relief when a deficiency of profits occurs are contained in Section 7 *infra*.

(10) “director” includes any person occupying the position of a director by whatever name called and also includes any person who—

(i) is a manager of the company or concerned in the management of the business; and

(ii) is remunerated out of the funds of the business; and

(iii) is the beneficial owner of not less than twenty per cent of the ordinary share capital of the company;

Source of the definition.—The first part of the definition, *viz.*, the provision “‘director’ includes any person occupying the position of a director by whatever name called” reproduces the definition of director contained in Section 2 (5) of the Indian Companies Act and shows that the particular designation given to him in the articles or other records of the company is immaterial. He may be called, *e.g.*, ‘governor’ or ‘manager’, but if he is in a position to exercise the powers of a director he is a ‘director’. Regard is to be had to the nature of the office and not to the name of the office.

The latter part of the definition is taken from the English Finance Acts. The expression ‘director’ was defined in Section 49 (3) of the English Finance Act of 1916 as including any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business. The present definition of the term runs on the lines of the following definition contained in the 4th Schedule to the Finance Act of 1937 which adapts the provisions of the Income-tax Acts to computation of profits for National Defence Contribution:—“The expression ‘director’ has the same meaning as in Section 144 of the Companies Act, 1929, except that it includes any person who—(i) is a manager of the company, or otherwise concerned in the management of the trade or business; and (ii) is remunerated out of the funds of the trade or business; and (iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company.”

Person concerned in the management.—Under the second and the most important part of the definition, in order that a person may be a director three conditions must be fulfilled:

(i) He must be a manager of the company or concerned in the management of the business. Whether a person is concerned in the ‘management’ is a question of degree, and therefore of fact: *Glanwill, Enthoven & Co. v. Commissioners of Inland Revenue* (192 L.T. 770). A person may be ‘concerned in the management’ even though he is not concerned in the management of the business as a whole. It is not necessary that ‘he should have his finger in every corner of the pie’ as stated by Lord Haldane, L.C., in *Glanwill, Enthoven & Co’s*

Case (132 L.T. at p. 773). Further, if the status of a person and services for which he is paid are of a managerial character, the fact that during the accounting period he was actually engaged in work of a subordinate nature is immaterial. In other words, the duties actually performed during the accounting period are not conclusive: *Collette v. Lockie Pemberton & Co.* (1918 W.N. 262). Where several businesses are carried on by a company under different managements a person concerned in the management of one of these alone will be within the section. It should also be noted that what the section contemplates is concern in the management of the *business* of the company and not necessarily of the company itself.

The meaning of the expression 'concerned in the management of the trade or business' was considered in some detail in *Thompson Brothers & Co. v. Amis* [1917] (2 Ch. 211). A person was employed in a business as a marketing clerk. He had a larger position than other marketing clerks of the firm, being allowed to sign cheques, attend the meetings of and advise the partners, and personally conduct matters of importance, but was not himself a partner. His remuneration was a sum equal to a share of the profits and of the same amount as the share of each of the junior partners. It was contended that he was not a person concerned in the management of the business. Referring to this contention Sargent, J., said (at p. 224):

"The last defence, which is clearly one of substance, is that the defendant although he may be a person who is remunerated by way of share of profits, is not a manager or person concerned in the management of the trade or business. That is a question of evidence, and I have heard the evidence on the point. The defendant was in a very peculiar position. (His Lordship stated the facts as to his remuneration and powers and duties, and continued:) On these facts I have to consider whether the defendant was a manager or a person concerned in the management of the trade or business. That phrase "person concerned in the management of the trade or business" is obviously intended by the Legislature to be a phrase of wider denotation than, and including more persons than are included in, the term "manager". Looking at the matter all round, it seems to me abundantly clear that, if not actually a manager, as to which I have some doubt, the defendant was at any rate a person concerned in the management of the business in question".

(ii) The second condition is that he must be 'remunerated out of the funds of the business'. In the case of *Thompson Brothers & Co.*, cited above, the meaning of this expression also was considered. The learned Judge said: "I have still to consider whether the defendant has also the qualification of being "remunerated out of the funds of the trade or business". Now it is quite clear that he had no right to receive any specific part of the profits. He could not under any circumstances, I think, have had a receiver of any part of the profits appointed. The language of the agreement is very carefully drawn so as not to make the defendant a partner or expose him to the liabilities of a partner; he is not given seven thirty-seconds of the profits, but is to be paid a sum equivalent to seven thirty-seconds of the net divisible profits; and

it is quite clear that his only remedy in respect of that would be a personal remedy against the partners in the firm to recover a sum equivalent to that proportion of the profits. But in ninety-nine cases out of a hundred the manager of a business is not given any right specifically against the profits of the business, but has his remuneration secured by way of personal obligation on the part of the partners although his remuneration may depend upon the amount of the profits. In my judgment, I should be straining words and not giving them a broad business meaning, such as I think ought to be given to words in legislation of this kind, if I were to hold that the defendant did not come within the language of sub-section (3) merely because he had no specific right against any part of the profits of the business."

In *Collete v. Lockie Pemberton & Co.* (*supra*) it was held that the expression 'remunerated out of the funds of the trade or business' referred to a person paid by a company out of the profits of the business as distinct from a person entitled to a share in the profits.

It is not clear whether the expression 'funds of the business' is narrower than 'funds of the company'.

(iii) The third condition is the beneficial ownership of "not less than 20 per cent. of the ordinary share capital of the company". 'Ordinary share capital' was not defined in the Act of 1940*. It was defined in para 13 (d) of the 4th Schedule to the Finance Act, 1937, as follows: "(d) the expression 'ordinary share capital' means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate or a rate fluctuating in accordance with the standard rate of income-tax but have no other right to share in the profits of the company." The Excess Profits Tax (Amendment) Act, 1941, has inserted a definition of this term: See Sec. 2 (16A) and Sec. 9 (8). The term 'beneficial ownership' excludes ownership as trustee or nominee and includes real ownership in whosoever's name the shares may be held. Mere power to exercise control without beneficial ownership is obviously insufficient.

(11) "dividend" has the meaning assigned to the expression in Section 2 of the Indian Income-tax Act, 1922;

For the scope and effect of the definition of 'dividend' see *A. N. Aiyar's Indian Income-tax Act*, 4th Edition, pp. 58-70.

(12) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under Section 3;

Appointment.—Under sub-section (2) of Section 3 an Excess Profits Tax Officer must be a person who is exercising the functions of Income-tax Officer under the Indian Income-tax Act and subject to this provision, sub-section (3) of that section empowers the Central Board of Revenue to appoint such persons as it thinks fit as Excess Profits Tax Officers and such persons are to perform their functions in respect of such cases as the Central Board of Revenue may assign to them. A notification appointing Excess Profits Tax Officers was made on September 14, 1940. See Rules and Notifications, *infra*.

*The Excess Profits Tax Bill contained a general definition of the expression but this was unfortunately deleted at a later stage under some misapprehension.

(13) "income" has the meaning assigned to the expression in Section 2 of the Indian Income-tax Act, 1922 ;

Definition in the Income tax Act.—Clause (6C) of Section 2 of the Indian Income Tax Act provides that "income includes anything included in 'dividend' as defined in Clause (6A) and anything which under Explanation 2 to sub-section (1) of Section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of Section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule". This, of course, is not a definition of the term but only includes within the term four kinds of receipts which would not otherwise fall within it. For the nature of 'income' and its essential attributes see *A. N. Aiyar's Indian Income-tax Act*, 4th Edn., pp. 71 and 98 to 124.

(14) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;

Source of the definition.—This definition enacts the provisions of Section 22 clause (d) of the Finance (No. 2) Act of 1939 of the United Kingdom, with the substitution of 'maximum rate' for 'standard rate'. The expression 'fixed rate' occurs in Section 13, clause (7), of the Finance (No. 2) Act of 1939 and in Clause 6, sub cl. (3) of the original Excess Profits Tax Bill of India which followed Section 13 (7) of the English Act. The Select Committee deleted a large portion of the proviso to Clause 6 (3) of the Bill including the portion where the expression 'fixed rate' occurred. The expression, however, appeared in the definition of 'ordinary share capital' in Clause 17 of the Bill and so was retained by the Select Committee. Though this definition was not retained in the E. P. T. Act, of 1940 the E. P. T. Amendment Act of 1941 has introduced a definition of 'ordinary share capital' in which this expression occurs. See Sec. 2 (16A) *infra*.

(15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under Section 3 ;

Appointment.—Under Sec. 3 (2) an Inspecting Assistant Commissioner of Excess Profits Tax should be a person exercising the functions of Inspecting Assistant Commissioner of Income-tax. Power to appoint vests in the Central Board of Revenue under Section 3 (3). For the Notification by the Central Board of Revenue appointing Inspecting Assistant Commissioners of Excess Profits Tax see Rules and Notifications *infra*.

(16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

Loss.—This definition follows Section 14 (3) of the Finance (No. 2) Act of 1939 which provides that ‘Loss shall be computed for the purposes of this Part of the Act in the same manner as, under this section, profits are to be computed for these purposes.’ For the substantial provisions of the Act relating to relief in respect of losses see Section 7 *infra*. Though carrying forward of loss is not allowed by the Act, Section 7 gives relief to a limited extent on the same lines. The removal of this provision from the substantive section relating to computation of profits in which it appears in the English Act to the interpretation clause does not appear to be an improvement in drafting. Loss does not of course, include capital loss.

(16A) “ordinary share capital” has the meaning assigned to that expression in sub-section (8) of Section 9 ;

The definition.—This clause was introduced by Section 2 of the Excess Profits Tax (Amendment) Act, 1941. There is a long history behind this clause: see notes to ‘fixed rate’ *supra* p. 28 and 1940 *Income-tax Reports*, Notes and Comments at p. 139: see U.K. Finance Act, 1940, for the corresponding definition of ordinary share capital.

(17) “person” includes a Hindu undivided family ;

The definition.—This definition merely includes within the term ‘person’ a Hindu undivided family. This must be read with the definition contained in Section 3, clause 39, of the General Clauses Act, 1897, which provides that “‘person’ includes any company or association or body of individuals whether incorporated or not”.

Local authorities.—The matter which deserves special notice in this definition is that ‘person’ does not include ‘local authorities’ for the purposes of excess profits tax, though it does include such authorities for the purposes of income-tax; for the Income-tax Act as amended in 1939 provides that ‘person’ includes a Hindu undivided family *and a local authority*: Section 2 (9). The result of this is that not only public undertakings and services but even trades or businesses carried on by local authorities, are not within the scope of the tax. There appears to be no reason why local authorities should be thus exempted. Under the English law they are not. There is also another difficulty. Though in the Excess Profits Tax Act the words ‘and includes a local authority’ have been omitted from the definition of ‘person’, the words introduced by the Amendment Act of 1939 in Section 4 (3) (iii) (*i.e.*, in the clause relating to exemption of income of local authorities) have not been omitted. As a result there is a total exclusion of local authorities from the definition of ‘person’, but when we come to exempted incomes, we find that ‘income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity, or service within its own jurisdictional area’ is not exempted. The definition of ‘person’ and the provision of Section 4 (3) (iii) as applicable to Excess Profits Tax Act are obviously inconsistent. If the intention of the Legislature is to exempt the income of local authorities altogether, it is necessary that

Section 4 (3) (iii) of the Indian Income-tax Act should be read as if the words introduced by the Amending Act of 1939 were omitted. It is possible to argue that since the Act as it now stands is silent as to whether 'person' includes local authorities and the exemption of income of local authorities is limited, profits from trade or business carried on by local authorities which are not exempted are subject to excess profits tax and this can be levied from the persons who carry on the trade, *i.e.*, 'the association or body of persons whether incorporated or not' who carry on the business for and on behalf of the local authority. This would lead to hard results perhaps not contemplated by the Legislature.

The Secretary of State and Government.—The word 'person' includes the Secretary of State when engaged in commercial transactions: *Commissioner of Income-tax, Bombay v. Sind Light Railway Co.* (138 I.C. 673). It is wide enough to include the Government: *Ram Prasad, In re* (50 All. 419; 4 I.T.C. 247).

Hindu undivided families.—With regard to the nature of Hindu undivided families consisting of a sole surviving male member and widows of co-parceners it was held by the Judicial Committee in *Kalyanji Vitthal Das's Case* [1937] (5 I.T.R. 90) and *Gomedalli Lakshminarain's Case* [1937] (5 I.T.R. 416) that the income in such cases belongs to the sole surviving male member and not to the family, and the 'person' carrying on the business in such cases would be the sole surviving member and not the family. The Hindu Women's Rights to Property Act of 1937 has altered this position, as it has conferred rights in the property to Hindu widows and it has been held that after this Act the person liable to pay income-tax in such cases will be the family and not the sole surviving member: *Commissioner of Income-tax, Madras v. Lakshmanan Chettiar* [1940] (8 I.T.R. 545). Excess profits tax would also in such cases be payable by the family.

Minors.—In *R. v. Newmarket Commissioners; Ex parte Huxley* [1916] (7 Tax Cas. 49) the position of a minor with regard to liability to pay income-tax was considered and it was decided that a minor could be assessed to income-tax in respect of profits made from a business or trade carried on by him. The same rule would apply for the purposes of excess profits tax.

Firms.—A firm is a 'person' for the purposes of income-tax and excess profits tax, and where a firm carries on a trade, assessment to excess profits tax may be made in the firm name: see Section 14 (3). But the fact that the unit for assessment for excess profits tax is the business and not the person, makes the rights and liabilities of partners in respect of excess profits tax materially different from their rights and liabilities with regard to income-tax. This subject is considered under Section 14 (3).

(18) "prescribed" means prescribed by rules made under this Act ;

Rule making powers.—Section 27 of the Act deals with the power to make rules and the procedure to be followed.

(19) “ profits ” means profits as determined in accordance with the First Schedule ;

Meaning of profits.—The first Schedule contains special rules regarding the computation of profits for purposes of excess profits tax. But what are ‘ profits ’ as distinguished from receipts of a capital nature is a very difficult question of income-tax and excess profits tax law which would have to be solved with reference to the particular facts of each case in the light of the principles laid down in the decided cases. These principles and cases are considered under Section 4 below which deals with the charge of excess profits tax.

(20) “ standard profits ” means standard profits as computed in accordance with the provisions of Section 6 ;

Importance of standard profits.—Standard profits mean in colloquial language the normal profits. Excess profits tax is charged on the amount by which the profits during the chargeable period exceeds the standard profits and this is therefore one of the main pillars on which the scheme of excess profits tax stands. The pre-war standard based on the amount of capital employed in the business was found to be complicated and defective and a standard based on profits has now been adopted in the English Act of 1939 and the Indian Act of 1940. See also *House of Commons Debates*. This topic is considered in greater detail under Section 6.

*(21) “ statutory percentage ” means—

(a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum ;

(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount ;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum:

*This clause is printed as recast by the Amendment Act of 1940.

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent :

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent. to ten twelve and eight per cent., respectively ;

Source of the definition.—The definition was originally taken bodily from Section 13, sub-section (9), of the Finance (No. 2) Act of 1939, except the last proviso (with regard to businesses commenced on or after 1st July 1938) which was added by the Select Committee to mitigate the hardship that might be suffered by new businesses which had no standard period owing to their recent origin: *Report of Select Committee* (Note on cl. 2). The Excess Profits Tax (Amendment) Act of 1940 recast clauses (b) and (c) in order to provide for cases of partnerships in which companies are members. In other respects it has adhered to the principle of the original Act. The percentage standard was adopted even in the earlier Excess Profits Duty Acts and the expression is to be found in the Finance (No. 2) Act of 1915, Sections 40 (2), 42 (1) and in the Finance Act of 1917, Sections 25, 26 and the Finance Act of 1920, Section 47.

Director-controlled companies.—Business of companies the directors whereof have a controlling interest are treated on the same footing as businesses carried on by bodies not incorporated and the statutory percentage in relation to them is the higher one of 10 per cent. The term 'director' includes a person who is a manager or otherwise concerned in the management of the business, is remunerated out of the funds of the business and is the beneficial owner of not less than 20% of the ordinary share capital of the company. See Section 2, Clause 10, *supra*. The meaning of these conditions has been considered under the notes to Clause 10.

'Controlling interest'.—The question when directors can be said to have 'a controlling interest' was considered in the United Kingdom by the Court of Session in the case of *Glasgow Expanded Metal Co. Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 573). In this case the Lord President (Clyde) said: "It seems to me that the only interpretation which can be given to that expression is by reference to the power which the number of shares held by the directors gives them to control the disposal of the company's assets and the administration of its affairs at a general meeting of the company"; and Lord Cullen said that where the shareholding of the directors is such as to give them a preponderating vote on any question that comes before the shareholders at a general meeting, *prima facie* that means that they have the controlling interest therein. If they possess a controlling interest in the company the way in which they choose to exercise it is immaterial. In this case the directors as a body held 4,300 shares out of a total of 7,600 shares and each of the shares was entitled to one vote under the Articles and it was held that the directors had a controlling interest.

In another case, *B. W. Noble Ltd. v. Commissioners of Inland Revenue* [1926] (12 Tax Cas. 911) the chairman of the directors of a company held half the number of ordinary shares issued and was also entitled when presiding at general meetings to a casting vote if there was an equal division of opinion among the shareholders. In computing the profits of the company for Corporation Profits Tax the Commissioners of Inland Revenue treated him as a director having a controlling interest in the company and made no deduction in respect of his remuneration in excess of £1,000 per annum. It was contended that this director had no controlling interest inasmuch as he was not in a position to control the company as regards the passing of special resolutions and because he was not in a position by virtue of interest to control the board of directors in the exercise of the powers given to them by the articles. Rowlatt, J., said: "It seems to me that 'controlling interest' is a phrase that has a certain well known meaning. It means the man whose shareholding in the company is such that he is the shareholder who is more powerful than all the other shareholders put together in general meeting. That is really what it comes to. Now, this gentleman has just half the number of shares, but those shares, in the circumstances of this case, are reinforced by the position that he occupies of chairman, a position which he occupies not merely by the votes of the other shareholders or of his directors elected by the shareholders but by contract; and, so reinforced, inasmuch as he has a casting vote, he does control the general meetings and inasmuch as he does possess at least half of the shares he can prevent any modifications taking place in the constitution of the company which would undermine his position as chairman." Following this case it was held in England recently in *British American Tobacco Co. v. Inland Revenue Commissioners* [1941] (2 K.B. 270; (1942) 10 I.T.R. Suppl. 67) that 'controlling interest' means such a relationship as brings about a control in fact, by whatever machinery or means that result is effected, and that a degree of control afforded by 51 per cent. holding is control within the statute. It is clear from these decisions that control means control by reference to voting power at a general meeting. It is doubtful whether a director can have a controlling interest in a company through another company without directly holding a majority of the voting power in the controlled company. The following words used in para 7 (2) (a) of the First Schedule to our Act [corresponding to para 10 (2) of Part I of the Seventh Schedule to the Finance (No. 2) Act of 1939] which deals with director's remuneration are more specific: "able, either directly or through the medium of other companies or by any other indirect means, to control," but it is not clear whether such a wide meaning can be given to the words 'controlling interest.' The meaning of "control" with reference to companies generally is considered in *Himley Estates Ltd. v. Commissioners of Inland Revenue* (17 Tax Cas. 367). Shares held as executors or trustees and interests in shares arising in cases where directors are beneficiaries in estates or trusts should not generally be taken into account: *Notes and instructions* para. 39.

It is possible for the directors and managers to have a controlling interest in a company without making the company a director controlled company within the meaning of these provisions if the directors proper on the whole take less than 50 per cent. shares and each manager is given less than 20 per cent. shares and the directors and managers together take more than 50 per cent. shares.

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of Section 10 of the Indian Income-tax Act, 1922.

It was found that the definition in the original Excess Profits Tax Bill had the effect of excluding the concession granted by the second proviso of Section 10 (5) of the Income-tax Act. The Select Committee, consequently, rejected this definition and substituted for it the definition contained in the Indian Income-tax Act, 1922, as amended in 1939. The definition thus adopted is more favourable for those concerns which had any considerable amount of unabsorbed depreciation owing to an insufficiency of profits in past years. The definition contained in Section 10 (5) of the Indian Income-tax Act runs as follows:—

10. "(5) Written down value means—(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less all depreciation allowable to him under this section;

(c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date:

Provided that where the provisions of the proviso to sub-section (2) of Section 26 are applicable, the actual cost to the assessee referred to in clauses (a), (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation:

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance."

This definition was amended as follows by Act (XXIII of 1941) but effect should not be given to this Amendment in the making of any assessment for any year before the year ending 31st March 1943.

"(b) in sub-section (5),—

(i) for clauses (b) and (c) the following clause shall be substituted, namely:—

"(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to

him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886, was in force : ” ;

(ii) in the first proviso, for the words, brackets and letters “ clauses (a), (b) and (c) ” the words, brackets and letters “ clauses (a) and (b) ” shall be substituted ;

(iii) the second proviso shall be omitted.”

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

(a) the Central Board of Revenue ;

(b) Commissioners of Excess Profits Tax ;

(c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax ;

(d) Excess Profits Tax Officers ;

(e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Indian Income-tax Act, 1922.

(3) The Central Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them :

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue ;

Provided that nothing in this sub-section applies to a Board of Referees :

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

Notifications appointing Excess Profits Tax Authorities.—The Central Board of Revenue has exercised its powers of appointment under sub-section (3) by Notifications published in the Gazette of India. See Rules and Notifications *infra*.

Control of the Central Board of Revenue.—The two provisos to sub-section (4) are intended to secure that the Board of Referees, and the Appellate Assistant Commissioners in the exercise of their appellate functions, shall not be subject to any control of the Central Board of Revenue.

Boards of Referees.—The wording of sub-section (5) corresponds with that used in the Indian Income-tax Act in relation to the Appellate Tribunal. The provision in sub-section (6) that the power to make rules with regard to the Boards of Referees (regulating their formation, composition and procedure) rests with the Central Government and not the Central Board of Revenue deserves special notice.

The Central Government have framed rules under sub-section (6) relating to the formation, composition and procedure of the Boards of Referees. These rules are called the Excess Profits Tax (Boards of Referees) Rules, 1940, and are printed *infra*: See Rules and Notifications.

4. (1) Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as

Charge of tax.

“excess profits tax”) which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :

Provided that any profits which are, under the provisions of sub-section (3) of Section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

¹ Provided further that, in the case of any business which includes the mining of any mineral, any bonus paid by or through the Central Government in respect of increased output of the mineral shall be totally exempt from excess profits tax under this Act.

² (2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of Section 7A.

The Source of the Section : English Acts of 1915 and 1939 compared.—

This is the charging section of the Act and corresponds to sub-section (1) of Section 12 of the Finance (No. 2) Act of 1939, and to sub-section (1) of Section 38 of the Finance (No. 2) Act of 1915. The wording of Section 12 (1) of the Act of 1939 is much simpler and happier. It is as follows: ‘Where the profits arising in any chargeable accounting period from any trade or business to which this section applies exceed the standard profits, there shall, subject to the provisions of this Part of this Act, be charged on the excess a tax (to be called the excess profits tax) equal to three-fifths of the excess.’ The Indian Legislature appears to have preferred to some extent the language of the earlier Act of 1915, Section 38 (1) of which ran as follows: “There shall be

(1) This proviso was added by the E. P. T. (Amendment) Ordinance, 1944.

(2) This sub-section was inserted by the E.P.T. (Amendment) Act XI of 1941 and was amended by Act XXIV of 1941.

charged, levied and paid on the amount by which the profits arising from any trade or business to which this Part of this Act applies, in any accounting period which ended after the fourth day of August 1914, and before the 1st day of July 1915, exceeded by more than £200, the pre-war standard of profits, as defined for the purposes of this Part of this Act, a duty (in this Act referred to as excess profits duty) of an amount equal to fifty per cent. of that excess".

The omission of the very comprehensive and significant expression 'profits arising from any trade or business' which occurs both in the English Acts of 1919 and 1939 and the true scope of which has been considered minutely in several decisions is certainly not an improvement.

Amendments.—The words 'determined in accordance with the provisions of Sec. 7A' were substituted by the Excess Profits Tax (Second Amendment Act) XXIV of 1941. This amendment was necessitated by the insertion of Sec. 7A which deals in detail with the computation of profits and capital in the case of chargeable periods which fall within this sub-section. The second proviso to sub-sec. (1) was added by the E.P.T. (Amendment) Ordinance, 1944.

Charge of tax: Income tax and Excess Profits Tax compared.—Those who have had to deal with the Income-tax Acts would at the outset be struck with the difference between the wording of Section 4 of this Act which imposes the charge of the excess profits tax and that of Sec. 3 of the Income-tax Act which imposes the charge of income-tax. Income-tax is charged "in respect of the total income of every individual, Hindu undivided family etc." On the other hand, this section of the Excess Profits Tax Act provides that 'there shall in respect of any business...be charged...on the amount by which the profits...exceed the standard profits a tax...referred to as excess profits tax.' The reference to the persons on whom the charge is levied is conspicuously absent and the section speaks only of a charge in respect of certain businesses on a certain amount. This is due to a fundamental difference in the nature of the charge between the two taxes.

The exact nature of the charge of excess profits tax and the difference between income-tax and excess profits tax in this respect have been considered in two English cases.

It was argued in *John Smith & Son v. Commissioners of Inland Revenue* (12 Tax Cas. 266), a case governed by the Finance (No. 2) Act of 1915, that excess profits duty was imposed upon the business and not upon the owner. Referring to this argument Viscount Finlay said before the House of Lords: 'I cannot so read the clause [Sec. 45 (2)]. The excess profits duty is charged not on the business but on the person who carried it on in the relevant accounting period. I cannot consider Section 45 (2) as empowering the Commissioners to assess to the duty a person who had no interest in the business during the accounting period in respect of which the assessment is made". This statement however occurs in a judgment of the House of Lords in which Viscount Finlay dissented from all the other members of the House.

The best exposition of the subject is to be found in the decision of the Court of Appeal in *Birt Potter & Hughes Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 976). In this case Sir John Simon argued that excess profits duty was also a personal tax like income-tax. The Court of Appeal unanimously rejected this view. Lord Hanworth, M.R., dealt at some length with this topic. After referring to the wording of Section 38 of the Act of 1915, Lord Hanworth said: "It does not appear that the tax is charged upon a person in respect of his activities. It is a tax designed to catch a portion of the amount which is deemed by the Legislature to be in excess of the normal profits of the trade or business." The learned Master of the Rolls then referred to the elaborate arguments of Sir John Simon and the various statutory provisions referred to by him in support of his arguments, and said: "Now, interesting as those sections may be, and useful as they may have proved in sustaining Sir John's argument, I think it is a good rule in this and in other cases to go back to the original charging section. *Melius est petere fontes quam sectari rivulos*; and interesting as it may be to follow the rivulets, if I can use that expression in reference to Finance Acts, I prefer to go back to the original charging section, Section 38, and the subsequent sections of the Act of 1915, and it is plain that the Excess Profits Duty is charged not on the person, but on the amount by which the profits arising from a trade or business exceed the normal. By Section 39: "The trades and businesses to which this Part of this Act applies are all trades or businesses.....of any description"—except broadly, husbandry and professional activities.....So far as "person" is introduced, it is only introduced where the machinery for the collection of the tax is set in motion, namely, by Section 44*: "The Commissioners of Inland Revenue may, for the purposes of this part of this Act, require any person engaged in any trade or business"—to furnish them with a return; and by Section 45, sub-section (2), "The duty may be assessed on any person for the time being owning or carrying on the trade or business". Those machinery sections illustrate the fact that after you have determined that there are excess profits beyond the normal, on the amount of which there is a charge to tax, and after you have separately considered and determined the amount of those profits, then you can assess that tax upon the person who for the time being is owning or carrying on the trade or business. It may not be uninteresting to observe that if one turns to the Income-tax Act, it is to be noted that there is a personal tax. The charging section there is under Section 1, "Where any Act enacts that income-tax shall be charged for any year at any rate the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the Schedules marked A, B, C, D and E." When one turns to Schedule D, one finds that the tax under Schedule D is to be charged in respect of the annual profits or gains to any person, and, speaking quite recently, Lord Wrenbury, in the case of *Whitney v. Commissioners of Inland Revenue* [1926] (A. C. 37) said at page 55 that the Income-tax Act, Sec. 1, charges income-tax in respect of all property, profits or gains. The charge is upon the person in respect of

*Sections 44 and 45 correspond to Sections 13 and 14 of the Indian Act.

the property. Lord Davey, in an older case, said also—"I am reading at page 45 in the case of the *Attorney General v. London County Council* [1901] (A. C. at page 26): "Income-tax is intended to be a tax upon a person's income or annual profits". If therefore, one contrasts the scheme and form by which income tax is imposed, there is reason for saying that that tax is upon a person, in respect of his profits and gains; whereas the tax which is imposed by the Excess Profits Duty Act is on the amount of the profits exceeding the normal, and unless there are such profits no tax is charged."

With regard to the argument based on the provision in the Schedule that profits are to be determined for the purposes of excess profits duty on the same principles as profits and gains are determined for the purposes of income-tax, Lord Hanworth said that "That does not intend or mean that you are to take some concessions or rights which may enure to an income-tax payer and by reflex action say that the nature of the excess profits duty is altered. You have first of all to determine according to the system of the Income-tax Act, what are the profits and see whether there is any excess profits tax. It is for that purpose that the Income tax Acts are referred to in Section 40 (1), but not to say that all the intricate rights or liabilities which may occur in the Income-tax Acts are necessarily introduced into the scheme which is utilised only for the purpose of the computation of the amount of the profits. Sargant, L.J., also expressed the same opinion in these words: "To my mind it is clear that under the express language of Section 38, sub-section (1), the unit of charge, the unit of assessment, is "any trade or business to which this Part of this Act applies". It is true that the person who has to pay the duty is the person who carries on the trade or business, but the unit of assessment, the unit of the charge is the trade or business". There is a provision in Section 14 of the Indian Act that excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period. As in the English Acts this provision occurs in a section which prescribes the machinery for recovering the tax, and the remarks made by Lord Hanworth are fully applicable to the nature of the charge of excess profits tax under the present Indian Excess Profits Tax Act. There is however one important point in connection with the English Act of 1939 and the Indian Act of 1940 which should be noticed in this connection, and that is this. The view which was laid down in this case that each separate business is a separate unit for the purposes of assessment to excess profits tax under the Act of 1915 has been intentionally abrogated by the legislature in the English Act of 1939 and the Indian Act of 1940. There is a specific provision in the English Act of 1939 in Section 12 (5) that "All trades or businesses to which the section applies carried on by the same person shall be treated as one trade or business for the purposes of this Part of the Act"; and a similar provision in the Indian Act [Section 2 (5), last proviso]. This, however, does not in any way alter the general nature of excess profits tax, namely, that it is a tax on the business and not on the person.

Essentials of the charge of Excess Profits Tax.—Under this section the essential features of the charge of excess profits tax are: (i) it is charged in respect of *businesses*; (ii) the business must be one *to which the Act applies*; (iii) the tax is charged on the *excess profits* of the business; and (iv) the profits must be *of the chargeable accounting period*. The section also prescribes (v) the *duration of the charge*, (vi) the *rate of tax*, and (vii) *exempted profits*. These topics are considered below in the order stated above.

I. What is business.—The term business has been defined for the purposes of the Act in Section 2, clause 5. The ordinary connotation of the term is that mentioned in the interpretation section of the Income-tax Act, *viz.*, a trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture. This definition has been extended for the purposes of the present Act by including within the term: (i) professions and vocations other than those carried on by individuals which depend wholly or mainly on their personal qualifications, and (ii) the holding of investments or property by companies or incorporated societies whose functions consist wholly or mainly in the holding of investments or property. These special provisions added by the Excess Profits Tax Act have been considered already under Section 2 (5), which defines business: See pp. 8-22 *supra*.

[*The general principles as to what constitutes business and its essential characteristics and the reported decisions of the English and Indian Courts relating to the meaning of business are dealt with fully in A. N. Aiyar's Indian Income-tax Act, 4th Ed., pp. 40 to 55. Some special topics which arise during war conditions are dealt with below.*]

Compulsory sales: Absence of commercial will.—In *Guinness & Co. v. Inland Revenue Commissioners* (1923 I.R. 186) the doctrine was advanced that there can be no business or trade unless there is an exercise of the commercial will. In times of war various assets, fixed assets as well as stock in trade, may be taken over by the Government under its compulsory powers and the owner may be forced to sell them to the Government at a fixed price or for compensation. It was held in the abovesaid case by a majority of the Judges that the profits made by such transactions are not profits of a trade. This doctrine, however, was emphatically rejected by the Court of Appeal and House of Lords in the *Newcastle Breweries Case* [1925] (12 Tax Cas. 927). In this case a quantity of rum was taken over by the Admiralty and a sum of money representing the cost thereof and a certain percentage of profit was paid to the brewers. Rowlatt, J., held that the profits were profits from trade and that the mere fact of compulsion did not make any difference. In the Court of Appeal, Lord Hanworth, M. R., said that it was not easy to accept the argument that as the transaction was carried out under a compulsory requisition it cannot be treated as falling within trade or business (p. 942). Warrington, L. J., said that the fact that the appellants were not free agents in the matter was irrelevant, though no doubt it was an unusual mode of deriving gain from a particular asset. "I cannot see," the Lord Justice said, "that the absence of commercial will to trade can make any difference if the

transaction is in fact a commercial transaction giving rise to profit" (p. 947). Sargant, L.J., said that the arguments based on the compulsory character of the taking had little weight (p. 949). Before the House of Lords, Lord Cave, L.C., said: "If the raw rum had been voluntarily sold to other traders the price must clearly have come into the computation of the appellants' profits and the circumstance that the sale was compulsory and was to the Crown makes no difference in principle"; and Lord Phillimore observed: "The sale was none the less a trade sale because the sale was forced upon the appellant company." Reference may also be made to *Charles Brown & Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 1256) in which it was held that a trade carried on compulsorily and under compulsory conditions was still a trade, and the remuneration paid to the owners was profits of trade. The question whether when all the assets of a business are compulsorily acquired and the whole business is stopped, the profits made thereby are profits of trade or a capital receipt is a slightly different one, and will be considered when we deal with what are 'profits.'

Activities of companies.—On the question whether an activity which if carried on by an individual would not amount to business would become so by the fact that it is carried on by a company Rowlatt, J., said in the case of *The Marine Steam Turbine Co. Ltd.* (12 Tax Cas. 174) as follows: "If any private person occupied the position which the respondent company occupies, it would be ludicrous to speak of him as carrying on a business. But it is said that the respondent company is not a private individual but an incorporated company, and that, no doubt, it is...It is said by the Crown that merely because it continues to exist like this to receive these monies and is a registered company it is carrying on 'business' within the meaning of the Act. I am unable to come to that conclusion."

But the following observations in the *Korean Syndicate Case* (12 Tax Cas 181) show that the fact that the activity is one carried on by a company is not wholly irrelevant. Lord Sterndale, M. R., said: "I do not assent, either that there can be no difference between an individual and a company. If you once get the individual and the company spending exactly on the same basis then there would be no difference between them at all. But the fact that the limited company comes into existence in a different way is a matter to be considered. An individual comes into existence for many purposes, or perhaps sometimes for none, whereas a limited company comes into existence for some particular purpose, and if it comes into existence for the particular purpose of carrying out a transaction by getting possession of concessions and turning them into account, then that is a matter to be considered when you come to decide whether doing that is carrying on a business or not." *Commissioners of Inland Revenue v. The Korean Syndicate Ltd.* (12 Tax Cas. 181 at p. 202).

In the same case Lord Atkin said: "Now, I quite agree that it does not necessarily follow that because a company is incorporated under the Companies Act it is carrying on a business. The Companies Act allows any association of persons, for a lawful purpose, to be registered in accordance with the provisions of the Act and one knows

that a company may be registered for professional purposes, and companies may be registered which are called under the Act associations that are not carried on for profit. But in this case you have a company formed by an association of persons clearly for a profit, and the purpose for which they are associated is described by themselves as being for the purpose, amongst others, of acquiring concessions and turning them to account for the purpose of making a profit which they may distribute amongst their shareholders," and the learned Lord held that this clearly amounted to carrying on a business: *Per* Lord Atkin (12 Tax Cas. at p. 204). See also *per* Younger, L.J., at p. 207.

Referring to these observations Rowlatt, J., said on a subsequent occasion: "I do not think Younger, L.J., meant to say it, nor has anybody said, as far as I can see, that the mere fact that it is a company carrying on something, makes that something a business, when it would not have been a business if a private person had been carrying it on. Nobody has gone the length of saying that, but it is obvious from what the Master of the Rolls said, that when you are considering whether a certain form of enterprise is carrying on business or not, it is material to look and see whether it is a company that is doing it." *Per* Rowlatt, J., in *Commissioners of Inland Revenue v. Birmingham Theatre Royal Estate Co., Ltd.* [1923] (12 Tax Cas. 580).

Business and Property distinguished.—Income from business has to be distinguished from income from property though sometimes it may be difficult to do so. If a man keeps on developing land and selling year after year he would be carrying on business; but if he has got land and keeps on building on it and never sells it at all, but has rent from the houses that he builds, he does not carry on a business, but is merely investing his money in new property and keeping it: *Per* Rowlatt, J., in *Commissioners of Inland Revenue v. Sangster* (12 Tax Cas. 208 at p. 216). Letting out of property and the holding of investments and property by private individuals does not amount to business: (cf. *Council of State Debates*). Where a large area of land was purchased jointly by several persons and resold in plots at a profit it was held that the transaction amounted to business: *Thakur Datt Sarma and others v. Commissioner of Income-tax, Punjab* [1939] (7 I.T.R. 154); see also *K. H. Mody In re* [1940] (8 I.T.R. 179).

See also *A. N. Aiyar's Indian Income-tax Act*, 4th Edition, p. 52, for further information on this subject.

Business and Profession distinguished.—This subject has been considered under Profession: see p. 10 *supra*.

Business and Employment distinguished.—This subject has also been considered at p. 20 *supra*.

II. Business to which the Act applies.—These are specified in Section 5 of the Act and will be considered under that section.

III. What are profits.—Under this Section (Section 4) excess profits tax is levied on the amount by which the 'profits' during any chargeable accounting period exceed the standard profits. The next question, therefore, which falls for determination is what are the 'profits' of a business. Before dealing with this important topic two preliminary observations have to be made.

'Profits' and 'Income'.—It will be noticed that the words used in the charging section of the Income-tax Act are 'income, profits and gains', while only the word 'profits' is used in the Excess Profits Tax Act. This raises the question whether the expression 'profits' of a business is narrower than 'income, profits and gains' of a business. That the word 'income' standing by itself is of wider significance than 'profits' is clear, but as applied to businesses is there any difference? The Judicial Committee said in *King v. B.C. Fir and Cedar Lumber Co.* [1932] (A.C. 441) that "moneys which are not strictly 'profits' of a business may yet be income of the tax payer". They said that the real question in that case was whether the insurance moneys in question (moneys received under a policy of insurance of net profits lost by a period of shutting down business owing to fire) constituted 'income' of the respondent within the meaning of the Taxation Act and not whether they were 'profits' of its business, and held that the moneys, though not 'profits' were yet 'income' from a business and were subject to income-tax. This case is some authority for the view that 'profits' is narrower than 'income' and that there may be 'income' from business which is not 'profits' and which is not within the purview of the excess profits tax. 'Profits', however, seems to be used in the wide sense of income in the Excess Profits Tax Act and it is doubtful whether the Act contemplates that the 'profits' of a business assessable to Excess Profits Tax are in any way narrower than the 'income, profits and gains' of a business which are assessable to income-tax.

'Profits' and 'Gains'.—An argument was advanced in the case of the *Port of London Authority v. Commissioners of Inland Revenue* (12 Tax Cas. 122) on the fact that the words 'and gains' are not to be found in the provisions relating to Excess Profits Tax. On this point Lord Sterndale, M.R., said (12 Tax Cas. at p. 137): 'It was however argued that they were not liable to excess profits duty because that was chargeable on profits only while the Income-tax Acts used the words 'profits and gains' and it was contended that revenue which the receiver could apply to his own purpose was a profit while revenue which he had to apply to public purposes was not a profit but only a gain, and therefore not chargeable with excess profits duty. I asked the Counsel who argued this point if he could refer me to any authority establishing this distinction between profit and gain and he cited a passage from *Mersey Docks and Harbour Board v. Lucas* (2 Tax Cas. at p. 29). That passage, however, so far from establishing the distinction, negatives it, for Lord Selborne expressly says that in the Act of Parliament "profits" and "gains" are equivalent terms, and I find that Mr. Justice Phillimore in *Delage v. Nugget Polish Co.* (92 L.T. 683) says: "I take the word 'gains' to be no larger than the word 'profits'." This statement of Lord Sterndale shows that 'profits' and 'gains' are equivalent terms and that nothing turns upon the omission of the words 'and gains' in the charging section of the Excess Profits Tax Act. The judgment of Lord Halsbury in *Gresham Life Assurance Society v. Styles* (3 Tax Cas. at p. 188-189) also confirms this view.

Definition of profits.—The word 'profits' has been defined in Section 2 (19) of the Act thus: 'profits' means profits as determined in

accordance with the First Schedule. The First Schedule merely gives some rules for the computation of profits. As to what are 'profits' of a business and what distinguishes profits from capital receipts we have to refer to the decided cases and the principles laid down therein.

The three well-known and oft quoted definitions of 'profits' are those of Lord Herschell, Lord Halsbury and Lord Esher. The definitions of Fletcher Moulton, L.J., and Professor Marshall have also been judicially noticed.

(i) "The profit of a trade or business" said Lord Herschell "is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purposes of earning those receipts": *Russell v. Aberdeen Town and County Bank* (2 Tax Cas. at p. 327).

(ii) "The profit upon which income-tax is charged", said Lord Halsbury, "is what is left after you have paid all the necessary expenses to earn that profit. Profit is a plain English word; that is what is charged with income-tax": *Ashton Gas Co. v. Attorney-General* [1906] (A.C. 10). Lord Halsbury further said in *Gresham Life Assurance Society v. Styles* (3 Tax Cas. 186) that profits and gains must be ascertained on ordinary principles of commercial trading and that the word profits 'is to be understood in its natural and proper sense—in a sense which no commercial man would misunderstand.'

(iii) Lord Esher defined profits in these words: "the difference between the expenses necessary to earn the receipts of the year, and the receipts of the year are the profits of the business for the purpose of income-tax": *City of London Contract Corporation v. Styles* (2 Tax Cas. 239 at p. 244).

(iv) Fletcher Moulton, L.J.'s definition which has been the subject of much criticism is as follows: "The word 'profits' has, in my opinion, a well defined legal meaning, and this meaning coincides with the fundamental conception of profits in general parlance, although in mercantile phraseology the word may at times bear meanings indicated by the special context which deviate in some respects from this fundamental signification. 'Profits' implies a comparison between the state of business at two specific dates usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates. For practical purposes these assets in calculating profits must be valued and not merely enumerated A depreciation in value, whether from physical or commercial causes, which affects their realizable value is in truth a business loss... .. But though there is a wide field for variation of practice in these estimations of profits in the domestic documents, this liberty ceases at once when the rights of third persons intervene. For instance, the revenue has a right to a certain percentage of the profits of a company by way of income-tax. The actual profit and loss accounts of the company do not in any way bind the Crown in arriving at the tax to be paid." *In re Spanish Prospecting Co. Ltd.* [1911] (1 Ch. 92).

(v) Professor Marshall in his 'Principles of Economics' defines 'profits' thus: 'when a man is engaged in business his profits for the year are the excess of his receipts from his business during the year over

his outlay for his business, the difference between the value of his stock and plant at the end and at the beginning of the year being taken as part of his receipts or part of his outlay according as there has been an increase or decrease of value.' This definition has been criticised by Farwell, J., in *Bond v. Borrow, Steel & Co.* [1902] (1 Ch. 353 at p. 366) on the ground that, stock and plant' obviously include both fixed and circulating capital, implying thereby that if only circulating capital was meant the definition might have been acceptable: [see 12 Tax Cas. 337].

Definitions discussed: The Naval Colliery Case.—The true definition of profits for purposes of income-tax and excess profits tax is that laid down by the House of Lords in the *Naval Colliery Case* (12 Tax Cas. 1017). Referring to the judgment of Fletcher Moulton, L. J., Lord Hanworth, M.R., said in the *Naval Colliery Case*: "Taking the judgment as a whole, I cannot think that it was intended to lay down that profits for the purposes of income-tax can be calculated otherwise than according to the usual methods of business. Lord Justice Moulton indicates the notion of profits theoretically; but there are many passages which show that he realised that such a standard was not adhered to in ordinary commercial practice. The judgment was not given in an income tax case and if it did intend to establish a new method of calculating profits it is in conflict with the *Coltress Iron Co. v. Black* (6 A.C. 315)". Lord Hanworth said that this case shows that though the true profits for purposes of political economy are to be estimated in the manner which Lord Moulton explained, the rule for estimating profits for income tax is different and that a distinction must be observed for income-tax purposes between outlay of capital assets, and disbursements and expenses upon the trade carried on. Lord Hanworth concluded that the true rule to be followed for income-tax purposes is the working rule established by Lord Herschell in *Russell v. Town and County Bank* (13 A. C. at p. 424; 2 Tax Cas. 321 at p. 327), and by Lord Halsbury in *Gresham Life Assurance Society v. Styles* (1892 A.C. at p. 316; 3 Tax Cas. at p. 189), and also by Lord Esher in *City of London Contract Corporation v. Styles* (4 T.L.R. 51; 2 Tax Cas. at p. 244), namely, "the difference between the expenses necessary to earn the receipts of the year and the receipts of the year, are the profits of the business for the purposes of income-tax."

In the House of Lords, Lord Buckmaster said: "the appellants say that the proper method of taking accounts for purposes of determining the profit of the trade is to value everything at the beginning and at the end of the accounting period and find the difference and this view they base on Lord Justice Moulton's statement in *In re The Spanish Prospecting Co. Ltd.* [1911] (1 Ch. 92). It is obvious that such a principle, which may have application in certain cases, cannot be universally applied, and, indeed, it is admitted by Counsel that it needs material modification. Lord Moulton himself pointed out at p. 101 that the rule ceases to apply when the Crown interferes. Nor can the rules applicable to wise and prudent trading be used in this connection as was pointed out by Lord Cairns in *Coltress Iron Co. v. Black* (1 Tax

Cas. at p. 312) where he says: "It may be proper for a trader, or for a trading company to perform in his or their books an operation of this kind every year, in order to judge of the sum that can in that year be safely taken out of the trade and spent as trade profits," but it cannot be done when the question is the amount of profits received". After disposing of the theory of Lord Moulton, Lord Buckmaster laid down the true meaning of profits for purposes of income-tax in these words: "What these profits are for purposes of the Income-tax Acts was defined by Lord Herschell in *Russell v. Town and County Bank* (13 A.C. 418 at p. 424) in these words: '*The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts*'. This may therefore be taken to be the correct definition of profits for excess profits tax purposes. Referring to Lord Moulton's statement, Lord Warrington of Clyffe said (12 Tax Cas. at p. 1052): 'The learned Lord Justice was dealing not with a profit and loss account for purposes of income-tax but with a balance sheet intended to show the actual financial condition of a business at the end of a business year'.

There are two other general statements also about profits which, though somewhat conflicting, require notice here. In the case of *Alexander Von Glen & Co. Ltd.* (12 Tax Cas. 232 at p. 239) Warrington, L. J., said: "Now the first thing I desire to say about it is that in my opinion the question whether the deduction is to be allowed is one that must be determined by the rules regulating the assessment of income-tax and not by rules regulating what may be allowed in the preparation either for a company, or for an individual or for a firm of the balance sheet or the profit and loss account". But Lord Hanworth, M.R., observed in *Worsley Brewery Co. Ltd. v. Inland Revenue* (17 Tax Cas. at p. 356): "Now it is quite true that the assessment of profits and gains for income-tax is an assessment which has to be corrected in accordance with the directions laid down by the statute, but subject to those corrections, the proper way of ascertaining the profits and gains is by the ordinary business method whereby those profits and gains would be ordinarily determined by businessmen".

Receipts and expenditure explained.—Referring to the accepted definition of profits Mr. Justice Rowlatt said as follows: "Receipts and expenditure require explanation. Receipts include debts due and they also include, at any rate in the case of a trader, goods in stocks. Expenditure includes debts payable; and expenditure incurred in repairs, the running expenses of a business and so on, cannot be allocated directly to corresponding items of receipts, and it cannot be restricted in its allowance in some way corresponding, or in an endeavour to make it correspond, to the actual receipts during the particular year. If running repairs are made, if lubricants are bought, of course no enquiry is instituted as to whether those repairs were partly owing to wear and tear that earned profit in the preceding year or whether they will not help to make profits in the following year and so on. The way it is looked at and must be looked at is this, that that sort of expenditure is expenditure incurred on the running of the business as

a whole in each year, and the income is the income of the business as a whole for the year, without trying to trace items of expenditure as earning particular items of profit"; *Naval Colliery Co.'s Case* (12 Tax Cas. at p. 1017).

Depreciation of fixed capital assets.—Provision to meet depreciation of fixed capital assets is not allowed: *Per* Lord Hanworth, M. R., in *Naval Colliery Co.'s Case* (12 Tax Cas. 1034). In this case Lord Hanworth relied on *Coltress Iron Co. v. Black* (6 A.C. 315). *Clayton's Case* (2 Tax Cas. 464) and *Alianza Co., Ltd. v. Bell* (5 Tax Cas. 60). In the last case Mr. Justice Channell said: 'Any prudent person who carries on business or gets an income from something in which the capital is necessarily wasting either by lapse of time as in the case of leasehold or by reason of the using up of the material with which he starts as part of his capital, will provide for such a case by a sinking fund—by putting aside each year so much in order to meet the exhaustion of the capital. But although it is a prudent course to adopt any deduction in respect of it is not permitted in the Income-tax Acts'. That judgment was affirmed in the Court of Appeal [1905] (1 K. B. 184) and in the House of Lords [1906] (A.C. 18).

To the argument that a sum of money required to repair damage to a capital asset which has occurred ought to be treated as an expenditure deductible from such receipts before arriving at the profits, Lawrence, L. J., said: "In my opinion the loss so suffered is a loss to the fixed capital assets of the company and if it were permissible to deduct such a loss from revenue before arriving at the profits the appellants' contention would be sound—but the authorities are against the permissibility of computing profits on the basis of a valuation of fixed capital assets": *Naval Colliery Co.'s Case* (12 Tax Cas. at pages 1042-43). And Lord Warrington said: "When everything has been said that can be said this claim is really for "deterioration in the value of a capital asset of the business and such a claim cannot be allowed in the computation of profits for the purpose of income-tax and therefore cannot be allowed for the computation of profits for the purpose of excess profits duty." Lord Warrington again said (at p. 1051): "Though depreciation in capital assets may be a proper item in the balance sheet it would not be a proper debit item in the profit and loss account for tax purposes".

Reserves for making good lost fixed capital.—It is well settled that the profits and gains of a business must be ascertained on ordinary commercial principles. It is clear that in applying those principles it is right and proper that all assets constituting circulating capital such as stock should be valued and such assets should be treated as income before ascertaining profits. It is equally clear that in applying these principles any sum set aside as a reserve for the purposes of making good a lost fixed capital asset, whether actually incurred or merely apprehended cannot properly be deducted from receipts before ascertaining profits, but must be treated as an application of profits: *Per* Lawrence, L. J., in *Naval Colliery Co.'s Case* (12 Tax Cas. at p. 1044). In another part of the same judgment, the learned Lord Justice said: "It is well settled and indeed was not disputed that a sum set aside for

reserve to meet apprehended losses in the future is not deductible from receipts when ascertaining profits for income-tax purposes as it is not an expenditure before ascertaining profits but an application of the profits themselves. In my opinion the same principle applies to a reserve fund set aside out of income to meet a loss to fixed capital assets which although in fact incurred during the accounting period has not been made good during that period": *Naval Colliery Case* (12 Tax Cas. 1043). Similarly in *Edward Collins & Sons' Case* (12 Tax Cas. at p. 781) the Lord President Clyde said that the practice of putting part of the profits in reserve has no effect on the true amount of profits actually made, and will not prevent the whole of the profits including the part put to reserve being taxed.

Fall in the value of stock an exception to the rule—What seems an exception to the rule that loss which has not been actually incurred cannot be deducted, is recognised where a trader has purchased and still holds goods or stocks which have fallen in value. Though no loss has been realised and loss may not occur at all, still at the close of the year he is permitted to treat these goods or stocks as of their market value. But this exception to the general rule has never however been extended to the case of probable or indeed apparently inevitable loss to be incurred in the execution of future contracts entered into during the year in question: *Per Lord Sands in Whimster & Co. v. Commissioners of Inland Revenue* [1925] (12 Tax Cas. 813, at p. 827). This difference is adverted to in the following passage in *Edward Collins & Sons' Case*: "It is common ground in this case that if the goods here in question had been taken in stock and had at the end of the accounting period, fallen in value, allowance for this loss would have been made in estimating the profits of the year, although the loss was not a realised one in money and its ultimate amount might be uncertain. The distinction may not be very clear between such a case and the present one where the merchant came under obligation to take delivery of the goods which have fallen in value below the price which he is bound to pay for them. But, be that as it may, a distinction is well recognised and no deduction is allowed in ascertaining the profits of the year in respect of unprofitable contracts which have been entered into during the tax year but have not been executed by way of payment or receipts of goods or otherwise during this year." (12 Tax Cas., at p. 784).

Trading receipts and capital receipts distinguished.—As Lord Macmillan recently observed, the problem of discriminating between a trading receipt and a capital receipt has frequently engaged the attention of the Courts and in general though the distinction is well recognised and easily applied, from time to time cases arise where the item lies on the border line and the task of assigning it to income or capital becomes one of much refinement. This subject has been considered generally at pp. 98 to 124 of the 4th Edition of *A.N. Aiyar's Commentary on the Income tax Act*. We propose to deal here in greater detail with the cases which arose in connection with excess profits duty in the United Kingdom and topics not dealt with fully in the *Commentary*.

Compensation for compulsory hiring.—In one of the earliest cases the Admiralty took over compulsorily on hire a steam drifter which till then was engaged in herring fishing. In the assessment for the period ended March 16, on the profits made before and after the hiring it was held that what the owner earned as hire from the Admiralty was not mere compensation for the stoppage of his business but was profit from business and that, notwithstanding the different uses to which the ship was put, the assessee was carrying on the same trade throughout, namely, employing a ship for profit: *Sutherland v. Commissioners of Inland Revenue* (12 Tax Cas. 63).

Compensation for permanent stoppage of business.—Compensation paid for permanent stoppage of business stands on a different footing. In the *Glenboig case* a railway company instituted an action to restrain the Glenboig Union Fireclay Co., (who held some mining leases from the Railway Co.) from working up fireclay under the railway on the ground that fireclay was not a mineral, and pending the action obtained an interdict against the Fireclay Co. The action was ultimately dismissed. The Railway Co. thereupon resorted to its compulsory powers and prevented the Fireclay Co. from working the mines and paid some damages in respect of the expenditure incurred by the Fireclay Co. in keeping the field under dispute open pending the action. It was held by a majority of the Court of Session of Scotland that the sum of money received as damages by the Fireclay Co. was not profits arising from its trade or in the nature of such profits but capital. The Railway Co. having ultimately placed a permanent embargo, the expenditure represented a dead loss of so much capital and it was to recoup this loss that the amount was paid. It was incurred in protecting a capital asset which turned out to be unproductive: *The Glenboig Union Fireclay Co. v. Inland Revenue Commissioners* [1922] (12 Tax Cas. 427; 1921 S.C. 400).

Compensation for compulsory acquisition of fixed assets.—There is a distinction between profits of a trade or business and compensation for loss of profits through sterilisation of fixed assets, e.g., by compulsory acquisition of assets from which profits might have been earned. This principle is also laid down in the *Genboig Union Fireclay Co.'s case* (*supra*) by the House of Lords. The Fireclay Co. carried on business as manufacturers and merchants of fireclay. Part of their property consisted of mining rights over certain beds of fireclay. An adjoining Railway Co. feared that mining near their railway may cause them damage and under the Scottish Railways Act the Fireclay Co. were prevented from working a certain area near the railway and in consideration were awarded a sum of £15,316 as compensation in 1913. The company claimed that this sum was part of their profits of the pre-war year of 1913. The House of Lords (Lord Buckmaster, Lord Atkinson, Lord Sumner, Lord Wrenbury and Lord Carson) unanimously held, confirming the decision of the majority of the Court of Session of Scotland, that the compensation thus recovered was not a profit or a sum in the nature of a profit earned in the course of the company's trade, but a capital asset.

Referring to this point, Lord Buckmaster, L. C., said before the House of Lords :

"It therefore only remains to consider whether the sum of £15,316 was properly included as a profit in the Appellants' balance sheet for the year ending 31st August, 1913. The argument in support of its inclusion can only be well founded if the sum be regarded as profits, or a sum in the nature of profits, earned in the course of their trade or business. I am quite unable to see that the sum represents anything of the kind. It is said, and it is not disputed, that the amount in fact was assessed by considering that the fireclay to which it related could only be worked for some two and a half-years before it would be exhausted and it is consequently urged that the amount therefore represents nothing but the actual profits for two and a half-years received in one lump sum. I regard that argument as fallacious. In truth the sum of money is the sum paid to prevent the Fireclay Company obtaining the full benefit of the capital value of that part of the mines which they are prevented from working by the Railway Company. It appears to me to make no difference whether it be regarded as a sale of the asset out and out or whether it be treated merely as a means of preventing the acquisition of profit that would otherwise be gained. In either case the capital asset of the Company to that extent has been sterilised and destroyed, and it is in respect of that action that the sum of £15,316 was paid. It is unsound to consider the fact that the measure adopted for the purpose of seeing what the total amount should be, was based on considering what are the profits that would have been earned. That, no doubt, is a perfectly exact and accurate way of determining the compensation, for it is now well settled that the compensation payable in such circumstances is the full value of the minerals that are to be left unworked, less the cost of working, and that is of course, the profit that would be obtained were they in fact worked. But there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test. I am unable to regard this sum of money as anything but capital money, and I think therefore, it was erroneously entered in the balance sheet ending 31st August, 1913, as a profit on the part of the Fireclay Company."

Lord Wrenbury explains the difference between profit and price paid for sterilisation of a capital asset from which profit might have been earned, in the following passage :

"First, as to the £15,316, this was compensation for being precluded from working part of the demised area which otherwise the Appellants might have worked and thereby made profit. Was that compensation profit? The answer may be supplied, I think, by the answer to the following question. Is a sum profit which is paid to an owner of property on the terms that he shall not use his property so as to make a profit? The answer must be in the negative. The whole point is that he is not to make a profit and is paid for abstaining from seeking to make a profit. The matter may be regarded from another point of view : the right to work the area in which the working was

to be abandoned was part of the capital asset consisting of the right to work the whole area demised. Had the abandonment extended to the whole area all subsequent profit by working would, of course, have been impossible, but it would be impossible to contend that the compensation would be other than capital. It was the price paid for sterilising the asset from which otherwise profit might have been obtained. What is true of the whole must be equally true of part."

In *Arthur Guinness & Sons Ltd. v. Commissioners of Inland Revenue* [1923] (2 I.R. 186) a large quantity of barley which had been purchased by a company for use in the manufacture of stout had been requisitioned by the Food Controller under the Defence of the Realm Act and sold under his instructions at prices fixed by him. The Commissioners of Inland Revenue held that the profit arising from the sale of this barley under the instructions of the Governor formed part of the profits arising from the trade or business of the company. The King's Bench of Ireland upheld this decision, but it was reversed by the Court of Appeal who held by a majority that there was no sale and the compensation money was not trade profit. The Master of the Rolls said: 'The barley taken over was a capital asset. That asset was sterilised as a profit making material'. The authority of this decision is considerably shaken by the case of *Newcastle Breweries Ltd.*, in which the Court of Appeal and the House of Lords have, on the whole, expressed disagreement with this case, although some of the Lords have also tried to distinguish it.

Compensation paid for compulsory acquisition of stock in trade: Newcastle Breweries Case.—The difference between compensation paid for stopping a trade or business altogether by placing an embargo on it or acquiring all its fixed assets or sterilising them and price paid in the form of compensation for goods compulsorily purchased by the Government is clearly explained in the *Newcastle Breweries Case*. In this case a quantity of raw rum was taken over by the Admiralty and a sum of money representing the cost of the rum and a certain percentage of profit was paid to the company. Subsequently a further sum was also awarded by the War Compensation Court. In the Court of Appeal Lord Hanworth, M.R., referring to this distinction said: 'I agree with Rowlatt, J., that the *Glenboig Case* (12 Tax Cas. 427) does not afford any guidance in the present. It was a case in which certain mining rights were surrendered for a payment made and those rights became sterilised. It was the sale of a capital asset out and out and prevented the acquisition of profit that might have been obtained if the mining rights had been exercised and the fireclay worked. The money received was capital. But it cannot be said that the Admiralty in taking the rum sterilised the appellants' business or any part of it. The rum was intended to be sold at some time in the carrying on of the appellants' business. Its requisition caused it to be dealt with sooner than later, but along the same channel down which it was always intended that it should pass from the appellants' possession, namely by sale.' Sargant, L.J., referring to the *Glenboig* and *Guinness Cases*, said that there is an essential distinction between them, namely, that 'in the *Glenboig Case*

the compulsory taking was part of the fixed assets of the company and therefore amounted *pro tanto* to a sterilization of an asset essential to the conduct of the company's business, whereas in the *Guinness Case* the asset taken formed part of the circulating capital of the company only, and the sum paid was available for replacing, and was actually used to replace, the whole or the greater part of the asset taken. To such a transaction, the learned Lord Justice said, the word sterilisation and the ideas connoted by that word are wholly inapplicable (12 Tax Cas. at p. 950). In the House of Lords, Lord Cave, L.C., affirming the decision of the Court of Appeal said that the transaction was a sale in the business, and although it affected the circulating capital of the company it was none the less proper to be brought into their profit and loss account. There was nothing in the *Glenboig Case* which was inconsistent with this view and if the *Guinness Case* said anything to the contrary, the Lord Chancellor said, he did not agree with it. Viscount Dunedin also concurred with the Lord Chancellor and said that the taking of the rum had no analogy with the embargo on working the clay fields in the *Glenboig Case*. The payment of the rum was in no sense a return of capital. It was simply a realisation of a portion of the stock in trade at rather an earlier stage of the process than was the case with ordinary sales. Viscount Dunedin was of opinion that the *Guinness Case* was not identical; if it were, it would have to be reconsidered: *Newcastle Breweries Case* [1927] (12 Tax Cas. 927).

Compensation for detention of ship by paramount power.—Where two ships ready for a voyage were detained by the order of the Government during a coal strike for a certain number of days and the shipowners were subsequently paid certain sums of money as compensation for loss of use of the ship and wages it was held that the sum received for loss of use of the ship owing to detention by the paramount power was a profit arising from the trade as shipowners. Rowlatt, J., distinguished the case of (i) compulsory user of ships by Government in which the compensation paid will be treated as hire: *Sutherland's Case* (12 Tax Cas. 63); (ii) payments by way of demurrage or damages for detention which arise out of contract which are made in the course of the trade; (iii) amounts paid for cancellation of contracts, which are also received in the course of the trade as held in *Short's Case* (12 Tax Cas. 955); (iv) compensation paid for loss where the source of the income is destroyed: *Glenboig Union Case* (12 Tax Cas. 427). He said in the case on hand the sum had accrued, not in consequence of any arrangements made, or steps taken, or policy pursued, or action done, or anything of the sort, by the person in the course of carrying on his trade, but it was a sum which was due in consequence of an interruption. It was money which became payable in view of the exercise of paramount supervening right on the part of persons outside the trade, which is wholly independent of any steps taken by the person conducting the trade. The learned Judge then stressed on the fact that the nature of the measure of the sum had no relation to the quality of the payment as laid down by Lord Buckmaster in the *Glenboig Case*. He said that the money in question was paid not as

compensation for the temporary interruption of the trade but in lieu of receipts which the shipowners might have earned during the days during which they were detained and were receipts arising from the trade. It is noteworthy however, that Rowlatt, J., has pointed out that cases where a source of income from property or business is temporarily interrupted and the owner of it is entitled to have his loss of profits replaced either by a claim against the tortfeasors or by recourse to an insurance company open a wide and difficult field for enquiry and it was not necessary to go into that in the present case. The decision of Rowlatt, J., was affirmed unanimously by the Court of Appeal (Lord Hanworth, M.R., Sargant, L.J., and Lawrence, L.J.). Lord Hanworth distinguished the *Glenboig Case* and rejected the argument of a temporary sterilisation of assets and agreed with the conclusion of Rowlatt, J., that the sum should be regarded as a sum paid which to the shipowners stood in lieu of the receipts of the ship during the time of interruption. That seemed to him he said, the right businesslike way of looking at it. Sargant, L. J., was of the opinion that the case was covered by *Sutherland's Case* as the Government had substantially the use and control of the ship for the periods in question. *France Fenwick & Co's Case* which was referred to by Rowlatt, J., was distinguished by Lord Hanworth and Lawrence, L.J., on the ground that there the authorities had only given instructions not to discharge whereas in the present case, the instructions given amounted to a requisition of the ship: *Ensign Shipping Co. v. Commissioners of Inland Revenue* [1928] (12 Tax Cas. 1169; 139 L.T. 111).

Compensation for cancellation of contract.—The question whether compensation paid for cancellation of contract is a trading receipt or a capital receipt was considered in *Short Brothers Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 955). A shipbuilding company entered into two contracts in February and March 1920 to build two ships for a steamship company on the basis price of roughly £ 600,000. The construction would in the natural course have taken about two years. In November 1920 the steamship company wanted to have the contract cancelled and the shipbuilding company agreed to do so on immediate payment of a sum of £ 100,000. It was argued on behalf of the Company that the amount in question was a capital receipt being compensation for not carrying on a trade, namely, of constructing the ships. Rowlatt, J., refused to accept this contention and held that the receipt was one arising in the course of trade and should be brought in for the computation of profits. He said: "The sum of £ 100,000 which they received was not in any material sense received as compensation for not being allowed to make their profits, that is to say, it was not received in respect of the termination of any part of their business nor was it received in respect of any capital asset, as was the sum in the *Glenboig Case* (12 Tax Cas. 427) that was received in respect of the obligation not to work the seam of fireclay; it was the same thing really, to all intents and purpose, as selling the seam of fireclay. This was not anything of that sort. It was, I think, simply a receipt in the course of a going business, from that going business—nothing else". The decision of Rowlatt, J., was affirmed unanimously by the Court of

Appeal (Lord Hanworth, M.R., Sargant, L.J., and Lawrence, L.J.). Lord Hanworth, in his judgment, said: "Mr. Justice Rowlatt has come to the conclusion that this figure (£ 100,000) ought to be included. He thinks that it is simply a receipt in the course of a going business from that business and from nothing else. It appears to me when stripped down to its simplicity, that that view of the transaction is correct and indeed I think it is not a difficult case." It was not argued, the Master of the Rolls said, that the shipbuilding company had less power than other business firms to determine whether or not they will bring to an end upon terms which they are disposed to agree contracts which they have entered into, contracts which, for one reason or another, are to be terminated in the interests of one party or the other to the contract. Once one sees that a contract may be determined in the course of business, we have the answer to the problem which is put before us. Concluding his judgment on this point Lord Hanworth, said: "it seems to be simply the sum paid in order that, as a matter of business, the responsibility and liability under the contract should be terminated and the business should be free to engage in others. Looked at from this point of view it appears clear that the sum received was received in the ordinary course of business and that there was not in fact any burden cast upon the company not to carry on their trade. It was not truly compensation for not carrying on their business; it was a sum paid in the ordinary course in order to adjust their relationship between the ship-yard and their customers." Sargant, L.J., put the matter briefly thus: "It seems to me that the ordinary conduct of the business of a shipbuilding company includes not only the making of contracts for the building of ships, but the modification or alteration of those contracts. In the present case, if during the progress of the work, the shipowners and the shipbuilders had desired either to accelerate the construction of the vessels and the payment of the amount to be paid, or to defer those payments they would have been perfectly able to do so, and the arrangements so made would in my judgment have been arrangements made by the company in the ordinary course of its business." Lawrence, L.J., said: "it appears to me that in a business of this kind, where a contract has been entered into in the ordinary course of business, a sum received for the cancellation of that contract is a sum which would go into the ordinary trading receipts of the company for the year in which it was received or in which it became payable, just as, if the company here had paid a sum for the cancellation of an onerous contract, they would have entered into the debits for the year the sum so paid. If that be the true view I think that this sum is one of those sums which would have to be entered as an item of receipt in the receipts of the company for the year. Whether it turned out to be a profit or not, of course, would depend upon other considerations." The same view was held in *Sunderland Shipbuilding Company v. Commissioners of Inland Revenue* (12 Tax Cas. 955), a connected case decided by Rowlatt, J., from which no appeal was preferred to the Court of Appeal.

The ruling in the case of *Short Brothers Ltd.*, was followed in *Commissioners of Inland Revenue v. North Fleet Coal and Ballast Co.*

Ltd., (12 Tax Cas. 1102). The owners of a quarry contracted to supply a purchaser with a certain quantity of chalk yearly for a period of 10 years and to build a wharf for loading the chalk. During the war the contract was suspended by mutual agreement and after the war the purchaser got the contract cancelled by agreeing to pay the owners of the quarry £ 900 for each of the remaining four years of the term. Subsequently this was modified and in August 1920 the company accepted £ 3,000 in a lump instead of the annual payments. It was held that this sum of £ 3,000 was a profit arising from the trade and must be included in the profits of the year ending December 31, 1920, in which it was agreed to be paid. Rowlatt, J., said that the point was concluded by *Short's Case*. He distinguished the case of *Smith & Son v. Moore* (12 Tax Cas. 266) where it was a purchase of contracts. The fact that the annual payments in this case were converted into a lump sum was held to make no difference and was not sufficient to make the receipt a capital receipt.

Compensation for breach of contract.—The nature of compensation paid for breach of contract was in question in *Jessee Robinson & Sons v. Commissioners of Inland Revenue* [1929] (12 Tax Cas. 1241). A company entered into contracts for the sale of certain quantities of yarn at specified prices. On the 19th July 1920 the purchaser cancelled these contracts and on the 16th June 1921 he agreed to pay a sum of £ 12,500 in settlement of the company's claim for damages for breach of contract. It was held that the sum paid was a trading receipt. Rowlatt, J., said that when a contract is broken and an action commenced in respect of it is settled by payment of damages for breach of contract there was no reason why the sum received in that respect should not be regarded as part of the receipts of the business for which that contract was made.

Remuneration paid to owners of controlled trades.—The Food Controller acting under the Defence of the Realm Regulations took up the business of a millowner under his control. Instead of giving compensation under the Act the Controller agreed to pay a fixed standard of profit as 'remuneration' to the millowners. The millowners paid to the controller profits in excess of that standard for two accounting periods but for four subsequent accounting periods received sums by which the profits fell short of that standard. The millowners contended that the 'remuneration' was not part of their trading receipts but was compensation for loss or damage. Rowlatt, J., held that though it cannot be laid down generally that compensation for earnings is on the same footing as earnings for the purposes of income-tax, the case was not one of difficulty. He said: 'The millowners carried on their business...They were remunerated by a sum equal to their standard profits. They received this money not for stopping their trade but really for continuing it—compulsorily and under compulsory conditions no doubt, but as we all know, that does not matter. They got it by continuing the operations of their trade.' The Court of Appeal (Lord Hanworth, M.R., Lawrence, L.J., and Greer, L. J.) unanimously confirmed this view: *Charles Brown & Co.* [1930] (12 Tax Cas. 1256).

Winding up and realisation sales.—The nature of the profit derived from winding up and realisation sales has been considered in a series of decisions in the English reports. The law on the subject is laid down by Lord Phillimore in these words:

"Income-tax being a tax upon income, it is established that the sale of a whole concern which can be shown to be a sale at a profit as compared with the price given for the business, or at which it stands in the books, does not give rise to a profit taxable to income-tax. It is easy enough to follow out this doctrine where the business is one wholly or largely of production. In a dairy farming business where the principle objects are the production of milk and calves or wool and lambs, though there are also sales from time to time of the parent stock, a clearance or realization sale of all the stock in connection with the sale and winding up of the business gives no indication of the profit (if any) arising from income; and the same might be said of a manufacturing business which was sold with the leaseholds and plant, even if these piece-goods formed a very substantial part of the aggregate sold. Where, however, a business consists, as in the present case, entirely in buying and selling, it is more difficult to distinguish between an ordinary and a realization sale, the object in either case being to dispose of goods at a higher price than that given for them, and thus to make a profit out of the business. The fact that large blocks of stock are sold does not render the profit obtained anything different in kind, from the profit obtained by a series of gradual and smaller sales. This might even be the case if the whole stock was sold out in one sale. Even in the case of a realization sale, if there were an item which could be traced as representing the stock sold, the profit obtained by that sale, though made in conjunction with a sale of the whole concern, might conceivably be treated as taxable income." *William Richard Doughty v. Commissioner of Taxes* [1927] (102 I.C. 17; A.I.R. 1927 P.C. 76).

(i) *English cases.*—A firm of wine merchants resolved in 1916 to close their business and issued a circular to that effect to their customers. They did not dispose of the whole of their business as a going concern but proceeded to sell their stock in hand and to exhaust the benefit of certain contracts for supply of which they enjoyed the benefit. They carried on their business in this way till 1918 and made good profits in 1917 in respect of which they were charged with excess profits duty. The case was one to which the Act of 1918 did not apply and the question was whether the profits arose from any trade or business or were sales effected in the course of realization of capital. The King's Bench held against the Crown. The Court of Appeal decided in favour of the Crown and this decision was upheld unanimously by the House of Lords (Lord Buckmaster, Lord Atkinson, Lord Sumner, Lord Parmoor and Lord Carson.): *J. & R. O'Kane & Co. v. Commissioners of Inland Revenue* [1922] (12 Tax Cas. 303; 126 L.T. 707) H.L.

The *Spanish Prospecting Co. Ltd. In re*, [1911] (1 Ch. 92) a decision of the Court of Appeal strongly relied on in the judgment in *J. & R. O'Kane's Case* (*supra*) also shows that 'profits arising from a

trade' are not restricted to profits realised by a company as a going concern but include profits realised by a sale in winding up. In the judgment of the learned Lords Justices in this case the principles are discussed in great detail.

(ii) *Foreign cases*.—The judgment of Lord Phillimore in *Doughty's Case* contains a review of the foreign decisions on the subject. The noble Lord said: "the authorities to which their Lordships have been referred, when carefully examined, show where the distinction is to be drawn between capital sales and sales producing income. Some of these authorities are cases in which a Company is dealing with land. In *Commissioner of Taxes v. Miramar Land Co. Ltd.* [1907] (26 N.Z.L.R. 723), a Company was formed for the purpose of dealing in land; and it acquired one property, of which it immediately sold a small portion, and a few months afterwards sold the rest in one block, and then it went into liquidation. It was held that the business of the Company was one of dealing in land, and that the profit ultimately acquired was none the less a profit upon dealing, because, when the last part of the profit was acquired, the Company ceased from carrying on business. So in the case of *Californian Copper Syndicate v. Inland Revenue Commissioners* [1904] (5 Tax Cas. 159), a company formed to buy copper-bearing land in County California, bought the land for cash, improved it, and then resold it in two portions to the Fresno Company for 300,000 shares of the nominal value of £ 1 each. The whole capital of the Fresno Company was 400,000 shares of which 75,000 were subscribed for in cash, 300,000 went to the Californian Company, and 25,000 were unallotted. It was held that the transaction was a sale in the line of the Company's business, resulting in a profit, and not a mere change in the mode of investment and, therefore, that the profit was taxable to income-tax. In that case the Primary Commissioners said that it seemed clear to them that the property has been bought in order to be sold.

On the other hand, in *Tebrau (Johore) Rubber Syndicate Ltd. v. Farmer* [1910] (5 Tax Cas. 658) this case was distinguished, and the particular transaction in this latter case was held to be a case of appreciation of capital and not one resulting in a profit taxable to income-tax. The facts were that the Company was formed to purchase land in Malaya and develop it by cultivating rubber trees. Two estates were bought, and much planting had been done; but the capital was insufficient, and the undertaking was (after existing for rather more than a year) sold to a second Company (the old Company being wound up). The consideration for the sale was £ 2,500 in cash and 36,000 £ 1 share of the new company. It was held that the first Company was not formed to deal in land as a business, and that this was a case of realization of an investment.

Then there are some difficult cases where the business is anent breeding stock. In the Australian case of *Commissioner of Taxation v. Western Australia v. Newman* [1921] (29 Commonwealth L.R. 484) a pastoralist put an end to his business and sold the whole station with stock and plant as a going concern, and it was held that the transaction was not the carrying on of a business but the winding up of a business

and that the profit made on the winding up was not a profit taxable as income: and in another Australian case, *Hickman v. Federal Commissioner of Taxation* [1922] (31 Commonwealth L. R. 232), another pastoralist who put an end to his business and sold his property, with all improvements and the cattle upon it, was held not to be liable to the war time profits tax in respect of the money realised by the sale of his cattle, even though in that case a separate price was realised for the cattle. [These cases have since been covered by legislation]. In the case of *Anson v. The Commissioner of Taxes* [1922] (N.Z.L.R. 330) the view of the Court was that Anson, who carried on a sheep farm, was carrying it on as a dealer in buying and selling sheep, and the Court said: "Every individual animal (with the negligible exception of the rams kept for breeding purposes) is part of the tax-payer's stock-in-trade. It is true that he does not, while his business is carried on, sell all his stock-in-trade at once; he always retains a part thereof. But in this respect his business is not different from that of other merchants. In the case of most trades it is only when the business is wound up or transferred that the entire stock-in-trade is disposed of. Normally a trader retains and carries over to the succeeding year a standard quantity of stock, but this permanent quantity does not for that reason cease to be stock-in-trade....."

This being so, in the view of the Court it did not make any difference whether the stock-in-trade was sold progressively or all at once by way of clearing sale or otherwise in connection with a transfer or a winding up of the business. Whether his profit was derived from a single sale of all his stock-in-trade at once, or from repeated sales in the ordinary way of his business, his profit was taxable income and was assessable accordingly. In that case the item of profit was arrived at by taking the value of the stock as it stood in Mr. Anson's books for one year and comparing it with the same item of value in the previous year, and it seems to have been assumed that this particular piece of farming could be treated by itself, and that all the items of buying and selling of animals and profits, if any, from sale of wool, with the per contra item of wages and fodder and such like could be taken as balancing each other, so that the difference between the values of the sheep stock in the two years represented the actual profit. It would be difficult to arrive at the profit in this way if it were the case of a farmer in England; but the trade of a pastoralist is one with which the New Zealand Courts would be familiar, and which it would be more easy for the New Zealand Judges than for their Lordships to appreciate. The reported cases on this branch of income-tax law are so involved in details that it is not always easy to see on which side of the line they fall. The case of *Commissioner of Taxes v. Melbourne Trust Ltd.* [1914] (A.C. 1001) is an authority for holding that in certain cases what seems like a distribution of assets, is in truth an application of profits. The case, however, nearest the present is that of *Craig (Kilmarnock) Ltd. v. Inland Revenue* [1914] (S. C. 338). There, on a transference from one Company to another, one third of the value of each item, other than stock-in-trade, as it stood in the books of the selling Company, was treated as its value for transfer purposes,

and the balance of a lump price, which with an undertaking to discharge liabilities, formed the consideration, was inferentially attributable to the stock. It was held, however, in that case that no sum could be pitched upon as the actual price of the stock, and no claim to assess a profit could be based upon such a foundation ”.

Executors and Liquidators.—That the activities of an executor in carrying out the wishes of the testator may amount to the carrying on of a business is clear from *Cohan's Executors v. Commissioners of Inland Revenue* [1924] (12 Tax Cas. 602). In this case a partner in a firm of ship brokers had entered into a contract in 1914 for the purchase of a ship for £82,500. He died after paying two instalments amounting to £15,000 and had to pay the balance of the price. The ship builders offered to relieve the executors of the contract but the latter chose to ask for completion of the contract. Then a single ship company was formed and the executors entered into a contract to sell the ship to it when completed for £150,000. Rowlatt, J., held that the executors carried on a business. He said: ‘Executors may not trade, certainly, as a general rule, but I think they may do certain things, which are from other points of view, trading, without offending against the prohibition that they may not trade, that is to say, they may trade to the extent of winding up the business which they find left to them by their testator’. This decision was, however, reversed by the Court of Appeal. Pollock, M. R., said: “The executors would have the duty of getting in the estate, of winding up the deceased’s affairs and concluding his business and they would necessarily have to deal with the business situation created by the testator in his life time but completing an incomplete contract for purchasing a ship and selling it at a profit would not amount to carrying on a business”. Atkin, L. J., said: “I apprehend that there is no obligation upon an executor at once to deal with executory contracts and terminate them in that way. It is a question of what is the best way of dealing with the estate and if there is an executory contract which will result in the creation of a chattel which will form part of the estate, and the executors are under a contract which binds them to complete that executory contract, it appears to me it is well within their power to do so and that in so doing there is no evidence that they are carrying on a business. That must happen very often in the case where the testator did in fact carry on business.....” And Sargant, L. J., said: “It is clear that in many cases a proper administration and realisation of a testator’s business may involve a continuation of the business for a time so as to be able to dispose of the business as a going concern. It would be prudent no doubt, for executors in such a case to come to the court for leave, but that would only be for the purpose of protecting themselves and getting an indemnity out of the estate. But whether that is so or not, they would become personally liable to those with whom they contracted in carrying on the business. They would, in fact, be carrying on a business and they would come within, I think, the assessment section, Section 45 (2) of the Finance Act, 1915”. The learned Lord Justice however held that in the case in question there was merely a realisation of an asset. It

was contended in a subsequent case that *Cohan's case* meant that where the executors merely do the necessary things for winding up a business they cannot be said to be carrying on a trade. To this Romer, L.J., said that that case did not lay down any such rule. A similar rule applies to liquidators. Reference may be made in this connection to *J. & R. O' Kane & Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 303), *Hillerns and Fowler v. Murray* (17 Tax Cas. 77) *Wilson Box (Foreign Rights) Ltd. v. Brice* (20 Tax Cas. 736) and *Baker v. Cook* [1939] (7 I.T.R. 284; 21 Tax Cas. 337), cases dealing with sales in liquidation.

Sale of trading stock: Finance Act of 1918.—In the United Kingdom the Finance Act of 1918 introduced special provisions [Section 35 (1)] with regard to profits from the sale of trading stock after the trade or business had ceased, in order to bring such profits within the fold of excess profits duty. Neither the English Act of 1939 nor the Indian Act of 1940 contain any such provision. It is difficult to see why such an important provision was omitted by the Legislature.

Sale of business and trading agreement distinguished.—A British Company which carried on the business of manufacturing dyes entered into an agreement with an American Company in 1916 under which it agreed to communicate to the latter all particulars of patents and secret processes and other information relating to the manufacture of dyes which they owned at the time or might subsequently acquire during a certain period, in consideration of the American Company paying annually to it a sum of £ 25,000 for a period of ten years. With regard to future patents the British Company was to receive a royalty if the other Company accepted a license to use them. The British Company contended that the annual sums of £ 25,000 received by it under this arrangement were instalments of a capital sum representing the sale price of an asset. It was held by the Court of Appeal, affirming Rowlatt, J., that the amounts received were not in truth and fact the purchase price of part of the property of the English company but receipts under a mutual trading agreement entered into for business purposes. Warrington, L.J., laid stress on the fact there was no reference whatever to any capital sum in the agreement: *British Dyestuffs Corporation Ltd. v. Commissioners of Inland Revenue* [1924] (12 Tax Cas. 586; 129 L.T. 533).

Sale of consumable stores.—A Company of shipowners found that owing to the requisition of some of the ships by the Government, they had a surplus quantity of coal to be delivered under contracts already entered into. They transferred the benefit of the contract to another Company at a certain premium per ton. They did not usually deal in coal and therefore contended that the profit made by the transfer of the contract did not arise from their trade but arose from the sale of a capital asset or were casual receipts only. The coal was not bought for the purpose of being resold in the course of the trade but was bought on revenue account, and not as a capital

asset. Rowlatt, J., said: 'On these facts, I think this is simply a case of a person who is bound to buy a certain amount of consumable stores who overbuys and is lucky enough to dispose of those consumable stores which he has got in the way of his business in relief of his business at a profit, or whatever way in which you like to put it,' and held that the profit earned arose from his business. The case of a person who buys a thing as a speculation, not as consumable stores, out of capital lying idle, and makes profit by its resale as in *Mc. Kinlay v. H. T. Jenkins & Sons Ltd.* (10 Tax Cas. 342) has no affinity to cases like this. Cases where contracts have been purchased at a price to carry on a business like *John Smith & Son v. Moore* and *City of London Contract Corporation v. Styles* are distinguished by Rowlatt, J., in this case: *Commissioners of Inland Revenue v. George Thompson & Co. Ltd.* (12 Tax Cas. 1091).

IV. Profits 'during the chargeable accounting period'—Under Section 4 of the Excess Profits Tax Act tax is charged on the amount by which the *profits during the chargeable accounting period* exceed the standard profits. The determination of the profits of a particular accounting period is not so easy as it might at first sight appear, for the exact accounting period during which a trading receipt accrues, or a loss or expenditure is incurred, is often difficult to decide. The cases decided by the English Courts in connection with excise profits duty imposed in 1915 lay down the main principles governing this aspect of the levy of excess profits tax.

Unlike income-tax, excess profits tax is a tax of temporary duration and the rates are also very high, and the determination of the exact period to which a receipt or expenditure relates becomes a matter of grave importance to the taxpayer and the Crown.

The English Act of 1939 has used the expression, 'profits *arising* in any chargeable accounting period from any trade or business' and the English Act of 1915 'the profits *arising* from any trade or business, in any accounting period'. The expression used in the Indian Act is 'profits *during* any chargeable accounting period.' But nothing seems to turn upon this difference in wording. We have only, we believe, an unguarded departure from correct legal phraseology to vague colloquial language.

The General Rule.—In the *Naval Colliery Case* (12 Tax Cas. at p. 1048) the general rule was thus stated by Lord Buckmaster. Expenditure to be deducted is the actual expenditure. The need for making the expenditure in a particular year or the fact that it ought in ordinary course of business to have been incurred in a particular year will not render an expenditure liable to be brought into account in that year if it is actually incurred before or after that year. The subject cannot be allowed to choose the period in which the allowance is to be brought into account, either that when the expenditure became necessary or that when it was made. For instance, ordinary covenants to repair business premises, if neglected might in the end temporarily prevent the continuance of the trade or seriously affect its profits and yet it can be only when the expenditure is made and not when in the

prudent carrying on of the business it ought to have been made that the sum for repairs can be charged against profits for the purpose of the Income-tax Acts. The fact that owing to the neglect, the trade was wholly stopped cannot affect the principle. In *Edward Collins & Sons, Ltd. v. Commissioners of Inland Revenue* [1924] (Tax Cas. 771; 1925 S.C. 151) Lord President (Clyde) stated the general principle in these words: "It is a general principle in the computation of annual profits of a trade or business under the Income-tax Acts that those elements of profit or gain, and those only, enter into the computation which are earned or ascertained in the year to which the enquiry refers; and in like manner only those elements of loss or expense enter into the computation which are suffered or incurred during that year. There are, it is true, some elements in the computation of profits of a business such as repairs which are matters of estimate, but that does not detract from the importance of keeping in mind that the object of the computation is to ascertain or to determine, as nearly as may be, the actual balance of the profits and gains of the business in each year of its operations. If authority is needed for these, as I think, elementary propositions, as applying to excess profits duty such authority will be found in the case of *Hall & Co. v. Commissioners of Inland Revenue* [1921] (3 K.B. 152; 12 Tax Cas. 382). See also 4th Edn. of *A. N. Aiyar's Commentary on the Income-tax Act*, pp. 282-283.

As similar questions are likely to arise in India under the Excess Profits Tax Act, the cases on this subject decided in relation to excess profits duty in the United Kingdom are referred to in some detail below :—

J. P. Hall & Co.'s Case.—Contracts for future delivery have been the source of a number of decisions on the question when a receipt should be brought in. In *Hall & Co.'s case* a company entered into a contract in March 1914 to supply certain goods, deliveries to be made between 1st July 1914 and 30th September 1915 and payment to be made one month after delivery. They then made a sub-contract in April 1914 on terms which would bring them a profit of £1,064 but owing to the war, deliveries were actually made by the sub-contractors only between August 1914 and July 1916. The company contended that the profits were ascertained in April 1914 and formed part of the profits and gains of the six months ending 30th June 1914 and not of the various accounting periods in which delivery took place; that the way in which the Company's accounts were made up could not bind the Company for taxation purposes and that the sum of £1,064 should be allocated to the pre-war period. The Crown on the other hand argued that the profits were attributable to the several accounting periods in which deliveries were actually made. Rowlatt, J., disagreeing with the Commissioners, said that as excess profits duty was a new tax based on a new principle of comparison of profits, the taxpayer was entitled to say: "Whatever I have done in the past, for the purposes of income-tax, in allocating the profits to particular years, and in dealing with the Crown on that footing, or whatever we may have done in a rough and ready way in our private accounts, when its comes

to comparing the productiveness in profits of one period with another I am entitled if I insist, to have it done with perfect accuracy". The learned Judge held that the company was entitled to take up its position *cum onere* and consistently. The Court of Appeal unanimously reversed the decision on the ground that the profits were not ascertained and made on the completion of the contract for the purchase and sale but only when the goods were delivered—*J. P. Hall & Co., Ltd. v. Commissioners of Inland Revenue* [1920] (12 Tax Cas. 382; 1921, 1 K.B. 213; 1921, 3 K.B. 152).

Isaac Holden and Son's Case.—The question arose for decision next in *Isaac Holden & Sons Ltd. v. Commissioners of Inland Revenue*. A company who were engaged in combing wool on commission for the Government were remunerated by the Government in common with other wool combers on the basis of a tariff as from June 1, 1917. From time to time, representations were made to the War Office for an increase in the tariff rate and in July 1918 as a temporary measure, the Government agreed to pay an increase of 10% on the existing tariff as from July 1918. This was to be a payment on account only and subject to adjustment up or down on completion of the examination of accounts to December 31, 1918. In July 1919 a further increase of 10% making a total of £20 was awarded as a final settlement. In the company's accounts for the year ended on June 30, 1919, they charged the full costs for the work done in the period but included for that work only the commission which had been received under the tariff as increased by the agreement of July 1918. The revenue authorities contended that the extra 10% granted in July 1919 should also be credited against the actual costs charged and be subjected to Excess Profits Duty for that accounting period. On the other hand the company argued that the extra commission of 10% had not been received during the accounting period and no account should be taken of it until it was received. The Special Commissioners decided in favour of the Crown. Rowlatt, J., confirmed this decision saying "I cannot see any sensible way of looking at the facts other than that which leads me to say that these profits arose from the business in the accounting period and therefore that the decision of the Commissioners was right." With regard to *Hall's Case* which was relied on by the Commissioners, Rowlatt, J., observed as follows:—"I do not feel that *Hall's Case* in the Court of Appeal really covers this case at all. I do not feel that affection at all for my recent decision in *Hall's Case*, if I may frankly say so; I think it was really wrong, quite independent of the fact that it was reversed by the Court of Appeal. But when one looks at what the Court of Appeal said in *Hall's Case*, I think they wished to lay stress upon the fact that they were dealing with a case where the contracts had not been executed at all, because the goods had not been received from the sellers, nor, of course, had they been delivered to the buyers. That is what they were dealing with: the whole thing was in *futuro*. That is what the Master of the Rolls is referring to when he says that it would be wrong to carry into the accounts the figure in question; that is what Lord Justice Atkin is referring to when he mentions that the goods had not

actually been delivered; and that is what Lord Justice Younger is referring to when he points out that the profits have not yet been realised by the completion of the transaction, the execution of the contract: *Isaac Holden & Sons Ltd. v. Commissioners of Inland Revenue* [1924] (12 Tax Cas. 768).

Edward Collins & Sons Case.—In the case of *Edward Collins & Sons Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 773) the facts were these. The final accounting period of a company for the purposes of excess profits duty ended on April 30, 1921. Prior to that date it had entered into various contracts for purchase of goods to be delivered between November 1920 and December 1921. After the contracts had been made prices fell. Up to April 30, 1921, the company had received only a portion of the goods under one of the contracts but all the vendors had informed them by letters that the whole of the goods had been set aside in their warehouse prior to April 30, 1921, and were held for the company. *Pro forma* invoices had also been received for the whole of the goods before April 30, 1921. The company claimed that in computing its profits for excess profits duty for the final accounting period which ended on April 30, 1921, the excess of the contract prices of the undelivered goods over the current market value on April 30, 1921, should be deducted as it represented a loss on the contracts. The Special Commissioners held that the loss had not already been incurred in the accounting period but was only an apprehended one and rejected the claim. The case was heard by the Court of Session and the decision of the Special Commissioners was unanimously confirmed. Distinguishing the case of insurance businesses in which an estimated loss is allowed to be deducted, the Lord President (Clyde) said: "It seems obvious that the character and position of a fire insurance business—depending as it does on the chapter of accidents, and involving payment of the annual premiums in advance—are different from the character and position of an ordinary commercial business. There is no precedent that I know of for a claim such as that made by the Appellants in the present case, although all commercial enterprise is subject to vicissitudes which may be, and now and then are, serious enough to cause grievous loss and even disaster. I confess to thinking that it would be a dangerous innovation to allow apprehended losses in *futuro* to constitute proper matter for deduction from the present profits of commercial undertakings".

It was further held that there was no evidence to show that the loss will be fairly measured by the difference between the contract price and the market price at the date on which the company struck their balance, for nobody could foresee what the price may be when delivery was taken.

Lord Sands said: "It is common ground in this case that if the goods here in question had been taken into stock and had, at the end of the accounting period, fallen in value, allowance for this loss would have been made in estimating the profits of the year, although the loss was not a realised one in money, and its ultimate amount might be

uncertain. The distinction may not be very clear between such a case and the present one where the merchant came under obligation to take delivery of goods which have fallen in value below the price which he is bound to pay for them. But, be that as it may, a distinction is well recognised and no deduction is allowed in ascertaining the profits of the year in respect of unprofitable contracts which have been entered into during the tax year but have not been executed by way of payment or receipt of goods or otherwise during this year. This general rule is not here in dispute, but it is contended that in the present case the contract is in a peculiar position owing to the magnitude of the depreciation and the almost inevitable character of the loss. These considerations illustrate the hardship with which the general rule may sometimes operate, but they do not appear to me to be sufficient to warrant us in refusing to recognise and give effect to the rule". *Edward Collins & Sons Ltd. v. Commissioners of Inland Revenue* [1924] (12 Tax Cas. 773; 1925 S.C. 151).

Whimster & Co.'s Case.—*Whimster & Co. v. Commissioners of Inland Revenue* [1925] (12 Tax Cas. 813) illustrates the same principle. Part of the business of a company consisted of hiring ships on time charter and carrying in them goods and merchandise as offered. On December 31, 1920, they had a number of such vessels on time charter under various charter parties the currency of which did not expire until various later dates. Freight rates fell and the company, besides the loss suffered within the accounting period, foresaw what was from a commercial point of view a practical certainty of future loss in the year immediately following it. In these circumstances the company claimed to include among the liabilities stated in the balance sheet struck at the end of accounting period which ended December 1920, the amount of the rates payable thereafter in respect of the unexpired portions of the time charters and to include among the losses appearing in the profit and loss account made up as at the same date a figure which represented the difference between the aforesaid amount and the sum of the freight rates obtainable by the full employment of the ships during the unexpired portions of the time charters calculated at rates current at the said date. It was held that the company was not entitled to do so as the difference between these sums was not an actual loss incurred in the period but only future anticipated loss. It was sought to distinguish *Collins' Case* (12 Tax Cas. 773) on the ground that the time charters should be treated as part of the trading capital of the company, that the time charters should be treated as stock in trade. But this argument was rejected by the court. Lord Cullen said that the course which was taken by the company was nothing more than a plain attempt to import by anticipation into their accounts for the year ending 31st December 1920 the apprehended results of their trading in this branch of their business for the following year: *Whimster & Co. v. Commissioners of Inland Revenue* [1925] (12 Tax Cas. 813).

Young & Co.'s Case.—The question of anticipated loss on forward contracts next arose for decision in *J. H. Young & Company v.*

Commissioners of Inland Revenue [1926] (S.C. 30; 12 Tax Cas. 827). A company which carried on business as muslin manufacturers entered from time to time into forward contracts in the purchase of yarn from a firm of sellers. Their last accounting period for excess profits duty ended in March 1921. It became evident that under the contracts outstanding on that date they would be liable to pay for undelivered articles a sum of £ 6,287 in excess of the current prices. They accordingly arranged with the sellers of the yarn (i) that the difference between the contract price and price current in March on the undelivered quantities should be charged against the company as a debtor, (ii) that the sellers should give them fresh sale notes for the undelivered quantities at the price current in March, (iii) when the undelivered quantities came to be delivered the company should pay (a) the price at the rate quoted in the aforesaid sale notes plus (b) a portion of the debt of £ 6,287 corresponding to the quantity delivered. The company claimed that they were entitled to deduction of £6,287 in their accounts for the accounting period ending March 1921. It was held that the deduction sought was inadmissible inasmuch as no loss had been suffered in the accounting period in question. Anticipated loss for a future year or period, said Lord President Clyde, however inevitable it may be thought to be, is not and cannot be a loss on the trading of the present year upon which it has not in fact fallen. With regard to the arrangements made with sellers the Court unanimously held that it was not more than an artificial transaction which must be disregarded under Rule 5 of Part I of Schedule 4 of the Finance No. 2 Act of 1915 and that it made no substantial change in the relations of purchaser and seller, debtor and creditor subsisting between the parties: *J. H. Young & Co. v. Commissioners of Inland Revenue* [1926] (12 Tax Cas. 827; 1926 S. C. 33).

Short & Co.'s Case.—The next case is that of Short & Co. Short & Co., who were a firm of ship-builders contracted in February and March 1920 to build two steamers for another company involving, on the basis price, a sum of £ 6,19,411. The vessels were to be delivered in a year and a half. After a few months, in November, they agreed to a cancellation of the contracts on a lump sum of £ 1,00,000 being paid to them immediately. Two questions arose (i) whether the sum of £ 1,00,000 thus received was a receipt arising from their trade and (ii) whether it should be included in the profits for the year ended June 1921 in which it was received. Rowlatt, J., said (p. 968): "Now, as to the apportionment of it, I think that rests upon an entire fallacy. This money, as I have said, was received from this contract in this year because the history of this contract did not extend beyond the year. I really cannot frame a reason why one is to suppose that the sum paid in this year, when the contract only lasts for that year, is somehow or other to be infected with the chronology of the contract which was put an end to and which would have run into some other years. I confess that I thought it was puzzling at first, but, thinking it out, there is really nothing in it". The Court of Appeal upheld the decision. Sargant, L.J., said (p. 974): "The time when the payments received by the company

and the profits earned by the company had to be brought into account is shown conclusively by the case of *J. P. Hall and Company Limited v. Commissioners of Inland Revenue* [1921] (3 K.B. 952) to be the time, not when the contract was made originally, or when the contract was varied, but the time at which the actual receipt took place in the ordinary course of business". Lawrence, L.J., said (p. 975): "On the second question I am clearly of opinion that the receipt is one which ought to be accounted for as on the date when it became due, the 20th November, 1920. It is a receipt which became due on that date, and of course the actual date of receipt seems to me to be immaterial; but, having become due on that date, I think it is, being a receipt in the ordinary course of carrying on this business, one which ought to be accounted for in the accounting period": *Short Bros., Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 955; 136 L.T. 689).

Other Cases.—(i) A shipbuilding company entered into a contract with a steamship company in 1919 to build a ship, for a certain amount in addition to cost of materials and labour. The purchaser went into liquidation and in December 1920 the shipbuilding company agreed with the liquidator for cancellation of the contract if the liquidator paid a sum of £ 35,300. The necessary sanction was obtained by an extraordinary meeting of the steamship company on 31st January 1921, but the payment was deferred at the request of the shipbuilding company until 9th July 1921, that is, after the final accounting period of the company for excess profits duty which ended on June 21, 1921. The company contended (i) that the sum received by it was not a receipt arising from its trade and (ii) that it was not liable to tax as it was received only after June 21, 1921, and alternatively that the amount should be apportioned over the period during which the work would have been performed, *viz.*, March 1921 to February 1922, and only the proportion that would have been earned before June 21, 1921, should be included in its profits. It was held that the sum in question was received in the ordinary course of trade and the whole of it was chargeable in the accounting period ending June 21, 1921, in which the agreement for cancellation was entered into.—*Sunderland Shipping Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 969).

(ii) A company of grain merchants agreed to sell wheat to the Royal Commission for Wheat Supplies and undertook liability for demurrage for detention of the carrying ships. Between February and June 1920 loading operations were delayed by labour troubles and claims for demurrage for the period from April to July 1920 totalling £ 38,847 were made by the wheat commission against the company. The company included this sum as an ascertained liability in its accounts for the year ended September 30, 1920, though it had protested and the claims had been held over by the wheat commission. After negotiations the commission agreed on the 7th March 1922 to give up its claims if the company supplied certain evidence. The company did so and credited £ 33,847 in the accounts for the year ended September 30, 1922. The company contended that there was an ascertained liability in 1920 and the claims were given up subsequently only in consideration of services rendered and claimed deduction of this sum for the year 1920.

It was held, affirming the view of the Special Commissioners, that there was only a contingent liability in 1920 and that even if there were an ascertained liability the accounts could be re-opened on the subsequent abandonment of the claim so as to disallow any deduction made.—*H. Ford & Co. Ltd. v. Commissioners of Inland Revenue* [1926] (12 Tax Cas. 997).

(iii) A pooling agreement was entered into in June 1918 between the coal merchants of Gibraltar and the Ministry of Shipping to overcome difficulties in the supply of coal owing to the war. The pool purchased coal from England and the remuneration of the merchants was limited to 10s. per ton. They received also an address commission of 2 per cent. on the freight allowed by the shipowners. When the pool was closed in March 1919 the actual stock of coal remaining in hand was much higher than the closing stock shown by the books of the pool. The Government claimed from the merchants the whole of the excess receipts representing the value of the surplus stock and the address commission; and these were transferred to trustees pending the dispute. Finally, in June 1923 an agreement was reached by which the coal merchants agreed to pay one half of the address commission and one half of the value of the surplus stock to the Government. Lambert & Co., one of the merchants, received their share from the trustees in July 1923. The question arose whether in assessing Lambert & Co., to excess profits duty for the accounting periods ending 30th June 1918 and 30th June 1919 the sums received by them in July 1923 and retained by them towards address commission could be included. The company contended (i) that the sums were not profits of trade and (ii) that they did not arise in the accounting periods, but only in 1923. Rowlatt, J., affirming the decision of the Special Commissioners, held that both these sums were really proceeds of the accounting years in question and should be brought into the accounts of those years; and the Court of Appeal affirmed this decision. Rowlatt, J., pointed out that the facts were different from *Isaac Holden's Case* (12 Tax Cas. 768) and the *Newcastle Breweries Case* (12 Tax Cas. 927) and said: "The sum had undoubtedly arisen in 1918 and 1919. The sum had arisen then and had been kept separate ever since. It was undoubtedly the proceeds of the dealings in coal at that time. There is no question about it. All that happened afterwards was its division, and it seems to me that if in the end it turns out that some of it remains as the profits of the merchants what they have had is a sum the origin of which cannot possibly be put later than the years of trade". As regards interest on the sum which had accrued after June 1921, the last accounting period, it was held that that could not be brought in. Lord Hanworth, M. R., said that with regard to the value of the surplus stock it was a part of the turnover of the trading of the pool; and the address commission, whether it was true address commission or deduction from freight, arose in the course of the trading of the pool and therefore must be held to have arisen during the time when the trade of the pool was being carried on. In Sargent, L.J.'s opinion, the value of the surplus stock received was definitely a compromise of the right of the merchants to a large sum of money which had arisen in

the course of an accounting period, and inasmuch as that was so, the title to the money received by way of compromise was referable to the period in which the sums had been earned and received and in respect of which the compromise was arrived at."—*Lambert Brothers Ltd. v. Commissioners of Inland Revenue* [1927] (12 Tax Cas. 1053).

(iv) During a coal strike in 1920 two ships were seized and detained in port by order of the Government for a certain number of days. The shipowners lodged claims immediately for compensation for loss of use of ships and wages and after protracted negotiations received a sum of £ 1,708 in April 1924 in settlement. It was held that this sum was a trading receipt of the company for the year ended 31st December 1920. Rowlatt, J., and affirming him, the Court of Appeal (Lord Hanworth, Sargant, L.J., and Lawrence, L.J.) unanimously held that the sum then received was received in lieu of the receipts of the ship during the time of interruption and should be brought into account in the profits of the year ended 31st December 1920, though it was received only in 1924.—*Ensign Shipping Co.'s Case* (12 Tax Cas. 1169).

(v) In the years 1915 and 1916 the owner of a business who found it difficult to find and retain the services of employees made an oral promise that when he turned the business into a limited company as he intended to do at the end of the war he would recognise the assistance of the employees by giving them in return for the extra service required of them during the war period, a bonus in the shape of a proportion of shares in the limited company when formed. The company was registered in January 1921, and by agreement adopted by the company in February 1921 the company took over the business as from 1st July 1920. In January 1921, it was arranged that £ 11,200, one £ shares should be allotted to the employees and share certificates were issued to them in October 1921. The amount was not charged to the revenue in the accounts of the business up to 30th June 1920, but was debited to capital account *ex post facto*. The owner of the business claimed that in computing the amount liable to excess profits duty for the accounting period ended 30th June 1920 the sum of £ 11,200, should be deducted. It was held by the Court of Session of Scotland (The Lord President Clyde, Lord Sands, Lord Blackburn and Lord Ashmore) (i) that no legal liability was incurred by the promise of 1915 and 1916 as there was nothing contractual or obligatory about it except in morals and honour; (ii) treating it as a bonus there was nothing given to anybody within the accounting period ending 30th June 1920 and the amount was not so deductible in that period. Lord Blackburn however, said that if any legal contract had been entered into, then possibly the expenditure under the contract might have been a proper charge against the assets of the business at June 1920.—*Commissioners of Inland Revenue v. Bell* [1927] (12 Tax Cas. 1181).

(vi) In June 1920, the assessee company contracted to purchase 250,000 bags of potatoes to be delivered before February 1921. After taking delivery of some bags, they refused to take delivery of the remaining bags on March 24, 1921. The other party brought an action and the matter was settled on 5th August 1921 by the company agreeing to take delivery of the remaining bags at a reduced price. The

transaction resulted in a loss of £ 4,700 and the company claimed that the loss should be deducted in the accounting period which ended on 30th June 1921, their final accounting period. The Recorder of Belfast held that the loss occurred on the 24th March 1921 and allowed the claim. Before the King's Bench, Moore, L.C.J., held that the loss occurred only under the new agreement of August 5, 1921, and so could not be brought in. Brown, J., held that the loss was incurred by a trading transaction, namely, the repudiation of March 1921, and that the Recorder's decision was right. In the Court of Appeal the matter was compromised by the parties. The judgments of the Chief Justice and Brown, J., contain a review of the cases on the subject and show the interpretations that could be put upon them. Brown, J., after reviewing the authorities, said that all these cases establish the principle that a trading loss must be accounted for in the year in which it is made or incurred, not necessarily paid, and that this is supported by the *Newcastle Breweries Case* (12 Tax Cas. 927).—*Commissioners of Inland Revenue v. Hugh T. Barrie Ltd.* [1928] (12 Tax Cas. 1223).

(vii) A contract was entered into on the 17th March 1920 for sale of goods. The seller agreed on 21st June 1921 to cancel the contract on payment by the purchaser of a sum of £ 200 in favour monthly instalments, first being 1st July 1921. It was held that the sum of £ 200 was a trading receipt of the accounting period which ended on 30th June 1921, though the instalments were actually payable only after that date. Rowlatt, J., after admitting that he felt some difficulty as to whether those sums ought not to be treated as of the dates when they became payable and not of the date when they became owing, namely, the date of the cancellation, said: "I think I am on sound ground in saying that in a case like this, the debt is fully earned, everything is done in connection with it, and it properly comes into the accounts unless it is a bad debt, of course, as a debt payable in the future". The decision of Rowlatt, J., in *Hull's Case* which was held to be wrong on appeal was distinguished on the ground that there he took the payments as of the date of the making of the contract, the contract being an executory one to manufacture and deliver goods. "I think my decision in that case would not have been quarrelled with," said Rowlatt, J., "if it had been a decision that when the goods had been made and been delivered, then the debt came into the period although the handing over of the money had not then taken place".—*Jesse Robinson & Sons v. Commissioners of Inland Revenue* [1922] (12 Tax Cas. 1241).

Giving of debit note.—A contract for sale of a quantity of goods at a fixed price was entered into on 30th March, 1920. On the 20th June 1920, this contract was cancelled and a new contract at a reduced price was entered into upon conditions of payment by the purchaser of a sum of £ 1,875 out of which £ 500 was received on 27th January 1921, and £ 1,375 on 16th August 1921. A debit note for £1,875 was however given on the 20th June 1920 when the contract was cancelled. It was held that the sum of £ 1,875 was a trading receipt of the accounting period which ended on June 30, 1920, even though it was actually received only in the year 1921. Rowlatt, J., said that it was

quite clear according to the ordinary meaning of terms, that a debit note means a debit *in presenti* and that the sum clearly fell within the accounting period ended June 30, 1920.—*Jesse Robinson & Sons v. Commissioners of Inland Revenue* [1929] (12 Tax Cas. 1241).

Effect of subsequent reduction of loss.—It is clear that if there is a liability which is subsequently determined, but which is none the less to be a liability existing at a particular date, the fact that it is subsequently to that date determined and ascertained does not prevent that liability belonging historically to its right place in the accounts. The quantum of it is ascertained at a later date; but the payment is to be made as at the date when it rightly occurs in the accounts, even if the quantum of it cannot be fixed at that moment: *Newcastle Brewery Case* (12 Tax Cas. 957) and *Isaac Holden & Sons Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 768). But the question whether the liability was fixed at an earlier date or only when the quantum itself was fixed may sometimes be one of difficulty. In *Bernhard v. Gahan* [1927] (13 Tax Cas. 722) an exporter borrowed from a bank on the security of the bills and shipping documents taken out in the name of the buyer. In 1920 the buyer became unable to pay. In the year ended March 21, 1920, he was allowed to deduct £ 22,410 being the claim of the bank against him. After subsequent negotiations the bank accepted (at the end of 1922) a sum of £ 8,000 in full satisfaction. The question arose whether the revenue authorities were entitled to re-open the previous years' assessments. Rowlatt, J., said: 'Certainly it did not operate to provide the appellant with a receipt in the ordinary course of the business in the succeeding year. It is not, of course, the case of a debt, which is allowed as bad producing some payment in a succeeding year. That, to my mind, is a perfectly different question. But here it is this debt owing by the trader, which suddenly eventuates as much smaller in the succeeding year. Now what is that? It certainly was not a profit of the next year. It seems to me either it disappears from the accounts altogether, or it must be dealt with by writing down in the year in which the debt was allowed the figure of the debt to the sum at which it finally became effective, and I think, I must do that. I do not see any other way out of it'. This decision was affirmed by the Court of Appeal. It was argued before the Court of Appeal that the subsequent negotiations which ended in the relinquishment of £ 14,410 should be treated so far as the revenue is concerned as *res inter alios acta*, that every trader is entitled to carry on his business in his own way, and if, by his status and standing with the Bank he is able to reach a more satisfactory position than might have appeared possible, that is an advantage which he reached for himself and it does not concern the Crown. Lord Hanworth, M.R., after stating the principles enunciated in the *Newcastle Brewery Case* (12 Tax Cas. 927 cited above) said: 'I would have been quite prepared if there had been evidence that the £ 22,410 had been agreed as a final figure, as I have said, to find in favour of Mr. Bernhard. But when I look at the facts as found by the Commissioners, and when I look at their decision upon the facts which they have found it seems impossible to

hold that there was anything more than an interim determination when the £22,140 was reached. The dispute was never concluded at any time from the time when it has been opened between the parties right away down to the time when the £3,000 was paid". Sargant, L.J., and Lawrence, L.J., were of the same view—*Bernhard v. Gahan* [1927] (13 Tax Cas. 722).

The Newcastle Breweries Case (House of Lords).—The question to what particular period of accounting a trading receipt belongs was considered by the Court of Appeal and the House of Lords in some detail in the *Newcastle Breweries Case*. In January 1918 the Admiralty took over a large quantity of raw rum from a company of brewers and wine merchants and paid them £10,315 being the actual cost of the rum with a profit of 1 sh. per gallon. Litigation ensued about the price paid, but before its conclusion the Indemnity Act was passed in 1920 and under that Act the War Compensation Court awarded to the company a further sum of £5,309 and this was paid to them in January 1922. This additional sum was credited in the company's accounts for the half year ended April 1922 but the revenue authorities allotted it to the year 1918 in which the rum was taken over and levied additional assessment for that year. Two questions arose (i) whether it was profits of trade, and (ii) whether the profits were profits of the trade of 1918 or of 1922. On the first point the House of Lords decided it was a profit of trade (see supra pp. 52-53). On the second point Rowlatt, J., held distinguishing *Halls Case* that the sum should be brought in the accounts for the year 1918 by re-opening the assessments. This judgment was affirmed by the Court of Appeal and the House of Lords.

In the Court of Appeal, Lord Hanworth, M. R., said as follows, [1928] (12 Tax Cas. at p. 944): "The next question is as to the time when the profits arose. It is clear from the facts that the payment made in May, 1918, was on account only, without prejudice, and the Appellants reserved their rights. It is also clear from the claim made before the War Compensation Court that the transaction was treated as one and indivisible. The Appellants claimed a sum of £28,571 in respect of the 239 puncheons of rum, giving credit for the £10,315 received on account. The judgment of the War Compensation Court is upon the same basis. They determined the whole amount upon one principle and the sum of £5,309 10s. 0d. is a balance only, due in respect of the original requisition which was made once only." Continuing, the Master of the Rolls said, (p. 945): "The case of *J. P. Hall & Co., Ltd. v. The Commissioners of Inland Revenue*, [1921] (3 K.B. 152) was pressed upon us, but in that case the payment became due one month after delivery and not until after delivery. There is in my opinion no justification for splitting up the sum paid by the Admiralty into fixed capital and profit, and treating them as separate items paid at different times. No doubt the War Compensation Court reached the figure awarded by consideration of the original price paid, plus a sum of profit, but this process does not justify the separation of the balance last paid from the interim payment made on account, or make the former different in nature from

the latter. There was no separate loss or damage which led to the payment of the latter sum, apart from that which drew the payment of the earlier amount. The whole amount of £15,624 11s. 4½d. is one sum, ascertained later, but attributable to the requisitioning of the 239 puncheons as a whole in November, 1917. The case of *Gleaner Company v. Assessment Committee of Jamaica* [1922] (2 A.C. 169) which was much pressed, appears to me an authority against the Appellant's contention".

Warrington, L.J., observed as follows with regard to this point (p. 947): "Finally, it was contended by the Appellants that if the £5,000 were to be taken into account at all for the purpose of ascertaining profits arising from their trade it must be so dealt with for ascertaining profits in the year in which it was received—by which time Excess Profits Duty had ceased to be leviable—and not in the accounting period ending 30th October, 1918. Treating the transaction, as I think we ought to do, as a commercial transaction, the property in the goods passed by delivery during the accounting period and the money then became payable, although, owing to a dispute as to the amount, it was not ascertained to be paid in full until some years later, and if this be so, then the whole amount, and not merely that part of it which was paid on account would, in my opinion, be properly dealt with in ascertaining the profits for the accounting period. The case of *J. P. Hall and Company Limited v. The Commissioners of Inland Revenue* [1921] (3 K.B. 152) was relied on by the Appellants, but in my opinion that case offers no support to their contention, inasmuch as the goods there in question were delivered during the period to which it was decided that the profits should be attributed. Lord Justice Atkin, in the course of his judgment, said: "To my mind the procedure of the Respondents in taking into account the profits that they made as and when the goods were delivered was the ordinary commercial procedure. Any other course would be quite contrary to commercial procedure." The action of the Appellants themselves in dealing with the £10,000 is, I think, some evidence that they recognised that they were acting in accordance with commercial procedure, and in my opinion this point fails."

Sargant, L.J., expressed his opinion on whether the £5,309 was a profit arising in the accounting period ending on the 30th October, 1918, in these words: "On this question also I agree with the decision of Mr. Justice Rowlatt. The raw rum was taken, the right of the company to receive a proper price for it accrued, or was earned, and the greater portion of the price was paid in the course of the accounting period; and indeed the whole transaction was concluded in that period except for the ascertainment of the balance of the price properly payable to the company. For various reasons great delay occurred in that ascertainment, but the result of that delay was merely to keep the matter open, and not to alter the date at which the profit when ascertained had arisen. The date of the origin or "arising" of the £5,309 was, I think, the same as that of the origin or arising of the first payment of £10,315 namely, the date in the accounting period ending the 30th October, 1918, when the Admiralty took the raw rum in question and became liable to pay for it. It can hardly be that the two sums

representing the total price of £ 15,624 for a single compulsory purchase can properly be said to have " arisen " at the two widely separate dates at which they were in fact paid. I think that the learned judge was quite right in distinguishing *Hall's Case* and in dealing with the matter upon the same basis on which he dealt with the problem in *Holden's Case*, namely, by treating the accounts of the company for the accounting period in question as reopened so as to include in their profits the sum of £ 5,309 in question."

The decision of the Court of Appeal was confirmed by the House of Lords. Lord Cave said (p. 953): " Secondly, it is said that if the £ 5,300 was a business profit, at all events it was not profit which arose in the accounting year 1917-18. I think it did, and I cannot see in what other year it can be said to have arisen. The rum was taken in 1918, and the right to some payment arose at once, though there was delay in ascertaining the amount to be paid. It is true that the Indemnity Act, 1920, entrusted the duty of ascertaining the amount to a new tribunal, namely, the War Compensation Court but on the principle of the Regulation as it stood in the year 1918. The change of the tribunal which was to ascertain the amount and enforce payment did not create the right to payment, or alter the date when the right to payment in fact arose. An illustration was put in the course of the argument when it was asked whether, if a partner had been interested in the profits of the Appellant's business for the year 1918, he would have had a right to share in this sum. I think the answer should clearly be in the affirmative; and just as the sum was part of the profits of the year so as to entitle a partner to share in it, so it appears to me that it was profit of the year so as to entitle the Government to take a share in the form of Excess Profits Duty." The Lord Chancellor's conclusion was that the sum in question was a profit arising in the accounting year 1917-18; and as it was not then either included in the Appellant's return or valued, and consequently was not then the subject of assessment to Excess Profits Duty, it should be assessed to that Duty in the year 1923 at its actual amount as then ascertained."

Viscount Dunedin said (p. 954): " As to the date, if I should read the Indemnity Act as a statutory extension of the right which arose on the taking of the rum and the conferring of an entirely new right, then I should consider that the date was the date when the award was made by the War Compensation Tribunal. I do not so read it. I think it left the actual right to be paid where it was, but provided that that right could only be made effectual to the claimant in a certain way. Then the thing for which he was paid was the thing taken, and the date of the taking was 1918. The addition of the £ 5,000 odd is in the same position as the interim payment of £ 10,000 odd in the year 1918."

Lord Phillimore said (p. 955): " The second point has given me more trouble. I think, however, that if the Indemnity Act had not been passed and the Appellants had been left to enforce their claim in accordance with the judgment of Mr. Justice Slater, the money which they should so recover would have represented profit earned in the year 1918, and that the taking away of this claim or right by the Indemnity Act, accompanied as it was *uno flatu* by the substituted

remedy given by the same Act, did not create a new source of profit." *Commissioners of Inland Revenue v. Newcastle Breweries Ltd.* [1927] (12 Tax Cas. 927).

Conflicting nature of the decision.—Though, as will be seen from the cases cited above, many eminent Lords and Lords Justices of England have taken part in deciding these cases and have expressed their views, the principles for determining to what accounting period a particular receipt, or a particular loss or expenditure, belongs are still obscure. The decisions themselves are very difficult to reconcile. Some take the date of actual receipt or disbursement as the criterion. In some cases the date of actual receipt or disbursement is thrown aside and all stress is laid on the date of ascertainment of liability. In a third set of cases both these are rejected and a receipt or loss is taken to pertain to the year of the transaction or contract to which it historically belongs. Only one thing is common. In all the cases the Crown has succeeded. Lord Buckmaster said that the subject cannot be allowed to choose the period in which an allowance is to be brought into the account but in the reported decisions Crown has succeeded in doing so. Perhaps the true principle is that the Crown is entitled to tax at the later stage if tax was not levied at the earlier stages.

V. Rate of Excess Profits Tax.—The Excess Profits Tax Bill proposed to fix the rate of tax once for all at 50% of the excess profits, i.e., of the amount by which the profits of any chargeable accounting period exceed the standard profits. The Select Committee thought that the rate of tax should be brought under annual review and the portion of Section 4 prescribing the rate of tax was accordingly altered. As the Act now stands the rate is :

(i) in respect of any chargeable accounting period ending on or before March 31, 1941—50 per cent. of the excess ;

(ii) in respect of any chargeable accounting period ending after that date—such percentage as may be fixed by the annual Finance Act. For the year 1941-42, the Finance Act of 1941 fixed the rate at 66⅔%. For 1942-43, 1943-44 and 1944-45 the Finance Acts of 1942, 1943 and 1944 have continued this rate.

Amendment Acts of 1941 & 1942 :—The Act was amended in 1941 by the addition of sub-section (2) and the rate for 1941-42 was also fixed. The effect of the sub-section is stated to be as follows :

Where an accounting period falls partly before and partly after the end of March, 1941, it does not become two chargeable accounting periods, one ending on 31st March, 1941, and the other commencing on 1st April, 1941. The computation of profits and of increase or decrease of capital is to be made for the whole period and the resultant excess or deficiency is to be apportioned on the time basis between the part ending at and that commencing after the end of March, 1941. In the case of an excess, the first part is to be charged at 50 per cent. and the latter part at 66⅔ per cent.

This sub-section was again amended by the (Second) Amendment Act of 1941 by substituting the words "determined in accordance with the provisions of Sec. 7-A". For the object of this amendment see page 38 *supra*.

VI. Duration of the Act.—The combined effect of the definition of 'chargeable accounting period' in Section 2 (6) and the provisions with regard to rate of tax in this section is that on the 31st March 1941, unless by an amending Act the definition of 'chargeable accounting period' was amended and the rate of tax was fixed by the Finance Act, the taxing provisions would cease to have effect. This expedient was resorted to after considering various alternatives in order to avoid the re-enactment of all the provisions of the Act at the end of March 1941 see *Report of Select Committee*.

VII. Exempted Profits.—The profits exempted from excess profits tax are:

- (i) all profits which are under the provisions of sub-sec. (3) of Section 4 of the Indian Income-tax Act exempt from income-tax; and
- (ii) all profits from any business of life insurance.

(i) *Profit exempted from income-tax under Sec. 4 (3).*—Nine heads of income are exempted from income-tax by Section 4, sub-section (3). These are considered under Section 4 (3) of the Income-tax Act in A. N. AIYAR's *Commentary on the Income-tax Act*, 4th Edn. at pp. 170 to 200 to which reference may be made.

(ii) *Profits from life insurance business.*—Following the English Act of 1939, the original Excess Profits Tax Bill did not make any provision for exempting income from life insurance business from excess profits tax. The Select Committee recommended that it is necessary to exempt such income for the following reason: "These are usually the object of triennial or quinquennial valuation and cannot be determined annually, and there is a reasonable presumption that life insurance will not make additional profits in conditions arising out of the war." See also the *Legislative Assembly Debates*.

The profits of other forms of insurance are not affected by these considerations and are ascertainable from year to year, and they have not been exempted. The exemption does not extend to Fixed Term Annuity or capital redemption business: *Notes and Instructions*, para 17 (1).

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of Section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section:

Application of Act. Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India:

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British

India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

*Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business.

Provisions of the English Act compared—Under the U. K. Finance Act of 1939 the businesses taxable to excess profits duty are "all trades or businesses of any description carried on in the United Kingdom, or carried on, whether personally or through an agent, by persons ordinarily resident in the United Kingdom" [Section 12 (2)]. The Indian Act of 1919 applied to "every business which was either carried on in British India by any person or owned or carried on in any place in India by a person ordinarily resident in British India," with the exception of certain specified kinds of businesses. The English Act of 1915 applied to 'businesses carried on in the United Kingdom or owned or carried on in any other place by persons ordinarily resident in the United Kingdom.'

The Indian Act of 1940 is not based on any such simple principle but has adopted a rather complicated method, as an inevitable consequence of the provisions introduced by the Income-tax (Amendment) Act of 1939.

The first paragraph of this section lays down the general rule and the 2nd, 3rd and 4th paragraphs contain three provisos as to cases (i) where the income of a business is wholly foreign income, (ii) where it is partly foreign income and (iii) with regard to income accruing in Indian States.

Under the 1st paragraph the Act applies to every business of which any part of the profits is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of Section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section. The section lays more emphasis on the nature of the business than on the status of the person carrying it on, as the

* This proviso was inserted by the Excess Profits Tax (Second Amendment) Act XXIV of 1941 but effect is not to be given to it in the making of any assessment in respect of any chargeable accounting period which is a previous year for an assessment under the Indian Income-tax Act for any year before the year ending on the 31st day of March 1943.

unit of assessment for purposes of excess profits tax is the business and not the person.

The two criteria which have been adopted by Section 5 of the Indian Act for determining the liability of a business to excess profits tax are thus: (i) chargeability of the profits of any part of the business to income-tax, and (ii) whether the profits accrue in whole or in part in British India. The former test is inextricably mixed up with the distinction between ordinary residents, persons not ordinarily resident and non-residents introduced by the Income-tax (Amendment) Act of 1939.

The effect of Sec. 5.—Under Section 4 (i) of the Indian Income-tax Act the income liable to be assessed to income-tax in British India is:—

(a) income received or deemed to be received in British India in the year

(b) in the case of *residents*

(i) income accruing or arising in British India in the year,

(ii) income accruing or arising outside British India in the year, and

(iii) foreign income (of 1933-39) brought into or received in British India in the year,

(c) in the case of *non-residents*, income which accrues or arises or is deemed to accrue or arise in British India.

Section 5 omits clause (a) and sub-clause (iii) of clause (b). The omission of clause (a) is important and the omission of sub-clause (iii) of clause (b) follows the omission of clause (a) as both deal with foreign income brought into British India.

The effect of Section 5 is this:—

A. ACCORDING TO NATURE OF THE BUSINESS.

1. *Where the profits of the whole of the business accrue or arise in British India*—the Act will apply to the business irrespective of whether it is carried on by an ordinary resident, person not ordinarily resident, or non-resident.

2. *Where the profits of a part only of the business accrues or arise in British India*—

(a) in the case of an ordinary resident the Act will apply to the whole business;

(b) in the case of a person not ordinarily resident (i) the Act will apply to the whole business if it is controlled in India; (ii) in other cases it will apply only to such part of the business, the part being treated as a separate business;

(c) in the case of non-residents the Act will apply only to such part of the business, the part being treated as a separate business.

3. *Where the whole of the profits accrue or arise outside British India*—

(a) in the case of an ordinary resident the Act will apply to the business;

(b) in the case of a person not ordinarily resident the Act will apply to the business if the business is controlled in India, but not otherwise;

(c) in the case of non-residents the Act will not apply.

4. *Where profits which had accrued outside before the period are merely brought into British India during the period*—the Act will not apply to the business merely on this ground.

B. ACCORDING TO THE STATUS OF THE PERSON CARRYING IT ON.

Looking at the matter from the standpoint of the status of the person carrying on the business the effect of Section 5 may be stated thus :

1. **Ordinary Resident**—Ordinary residents are liable in respect of every business, any part of the profits of which made during the chargeable period (i) accrues or arises or is deemed to accrue or arise in British India or (ii) accrues or arises without British India. They are not liable merely because foreign profits of the business earned before the chargeable period are received in British India during the chargeable period.

2. **Persons not ordinarily resident**—

(i) where the whole income of the business accrues or arises in British India the Act applies ;

(ii) where the whole income accrues or arises without British India, the Act applies only if the business is controlled in India ;

(iii) where income of part accrues or arises in British India, then (a) if the business is not controlled in India, the Act applies to such part treated as a separate business and (b) if the business is controlled in India the Act applies to the whole business.

3. **Non-Residents**—The Act applies only to such part of the business the profits of which accrue or arise in British India or are deemed to so accrue or arise and such part should be deemed to be a separate business.

Foreign Profits.—The substantial result of the omission of clause (a) and sub-clause (iii) of the clause (b) is that all profits which are assessable to British Indian income-tax on the remittance basis, that is, on the amount brought into British India, are excluded from the scope of excess profits tax. The following statement made by Mr. Sheehy who introduced the Bill before the Council of State contains an excellent summary of the scope of excess profits tax and the difference between the scope of this tax and income-tax :

“ The Bill will bring under taxation profits which arise both in British India and outside British India ; but business profits arising outside British India will only be taxable in certain cases. In the case of persons ordinarily resident, the whole of their business profits wherever they arise will be liable. In the case of persons resident but not ordinarily resident, profits arising outside British India and not deemed to arise in British India will not be liable unless the business is controlled in India. And in the case of non-resident only profits arising or deemed to arise in British India will be taxable. In all cases the tax is leviable on the arising basis and not on the remittance basis, so that if a resident or a non-resident receives in British India foreign profits which are not taxable on the arising basis, they will not be liable to excess profits tax although they will be liable to income-tax ”.

The statement made by Mr. S. P. Chambers before the Legislative Assembly may also be referred to with advantage. He has also emphasised the fact that the scope of excess profits tax is not so wide as the scope of income-tax inasmuch as all profits which are assessable to income-tax on the basis of the amount brought into British India are excluded from the scope of excess profits tax. With respect to income accruing in Native States even that portion which is remitted to British India is exempted from excess profits tax: *Notes and Instructions*, para 24.

The Provisoos.—The first two provisoos are intended to define the liability of persons not ordinarily resident and non-residents in respect of businesses whose profits accrue partly or wholly outside British India, and the third proviso exempts income accruing in Indian States.

With regard to the business of a *person not ordinarily resident* even if the whole profits accrue outside British India the business will be liable to excess profits tax if it is controlled in India; it will not be liable if it is not so controlled. Where the profits of a part only of the business accrue in British India he will be liable with regard to that part alone unless the business is controlled in India in which latter case, the whole income will be liable.

With regard to *non-residents* where the profits of a part only of the business accrue in British India or are deemed to so accrue such part shall be deemed to be a separate business. Where the whole profits accrue or are deemed to accrue outside British India, a non resident's business is, of course, not liable.

Question of Control: (i) *India defined.*—With regard to persons not ordinarily resident the question of control is important. 'India' is wider than 'British India'. The term 'India' is defined in Section 311 of the Government of India Act and means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas and any other territories which His Majesty in Council may from time to time after ascertaining the views of the Federal Government and Federal Legislature declare to be part of India. It is also now defined in the same terms in the General Clauses Act of 1897 as amended by the Government of India (Adaptation of Indian Laws) Order, 1937. 'Tribal areas' referred to mean the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State: See Government of India Act, 1935, Section 311 (1).

(ii) **Meaning of 'Control'.**—The words used in the Act are 'controlled in India'. In the Income-tax Act the words 'control and management' are used in some places. Here the word 'control' alone is used and it is therefore sufficient if the control is in India.

With regard to what constitutes control we have to refer to the English decisions relating to the control of companies. Under the English law the residence of a company depends on the place of its control and management and what constitutes control has been discussed in cases in which the place of residence of a company was in dispute. These decisions lay down the following principles:

(i) Control of a business does not necessarily mean the carrying on of the business; the place of control may be wholly different from the place where the business is carried on in fact: *Egyptian Hotels Ltd. v. Mitchell* (6 Tax Cas. 542); *San Paulo Railway Co. v. Carter* (3 Tax Cas. 407).

(ii) The test of control is the *right to exercise control not the actual exercise* of it daily and in the ordinary routine, and the decision as to the governing of its commercial venture, the capital to be invested, the terms on which the adventure shall be carried on, etc.: *Per* Hamilton, J., in *The American Thread Co. v. Joyce* (6 Tax Cas. 24); *Ogilvie v. Kitton* (5 Tax Cas. 336).

(iii) The place of control, in the words of Lord Halsbury, is the place where the 'head and brain of the trading adventure' is situated: *San Paulo Ry., Co. v. Carter* (3 Tax Cas. 407; [1896] A.C. 31). 'Head and brain' do not however allude to a clever manager. Rowlatt, J., said 'one might say in many businesses that the whole head and brain of this business are in the General Manager; he knows all about it and far more than all the directors put together. Therefore, they leave it to him and they are well advised in doing so.' It is not in that sense that the reference to the head and brain is made. I do not think the cleverest servant in the world, although he possessed all the brains of the institution could be said to be the head and brain for the purposes of the *San Paulo Case*, : *Mitchell v. Noble* (11 Tax Cas. 372 at p. 411).

(iv) Even though a person controls, if his position is such that he will be dismissed if he disobeys, he is not the man who controls but his master: *St. Louis Breweries v. Aphorpe* (4 Tax Cas. 119).

(v) The question of control is to be decided not according to the construction of this or that by-law, but upon a scrutiny of the course of business and trading: *Per* Lord Loreburn in *De Beer's Consolidated Ltd.*, quoted by Pollock, M. R., in *Swedish Central Railway Co. v. Thompson* (9 Tax Cas. at pp. 356-7).

(vi) The central management and control of a company may be divided, and it may keep house and a business in more than one place: *Swedish Central Railway Co.'s Case* (9 Tax Cas. 342). In such a case if one of the places from which control is exercised is in India the Indian Act would be satisfied.

(vii) The place where statutory obligations are performed is not necessarily the place of control of the business: *Todd v. Egyptian Delta Land and Investment Co.* (14 Tax Cas. 119).

(viii) The shareholders even in meeting are not the persons who control the business of a company, but the directors who are neither the agents nor servants of the shareholders, individually or collectively: *Stanley v. Gramophone Co.* (5 Tax Cas. 358).

(ix) Mere financial control is not sufficient: *Egyptian Hotels Ltd., v. Mitchell* (6 Tax Cas. 544).

(x) Mere possession of the majority of shares would not make that person the person who controls the company or the place where he resides the place of control: *Stanley v. Gramophone and Typewriter Ltd.* (5 Tax Cas. 358).

(xi) The head and brain do not reside where there is some ultimate powers of control to alter the articles by special resolution or the

power to interfere with fundamental finance such as there was in the *Egyptian Hotel's Case*: Per Rowlatt, J., in *Noble v. Mitchell* (11 Tax Cas. 372 at p. 411). It refers to power to control the carrying on of the trade.

Decisions.—The doctrine of control was evolved by a series of English decisions beginning from the well known cases of *Cesena Sulphur Co. Ltd. v. Nicholson* (1 Tax Cas. 88) and *Calcutta Jute Mills Ltd. v. Nicholson* (1 Tax Cas. 83) decided in 1876 dealing with the residence of companies. These decisions laid the foundations of the now well established principle of English law that a company resides where the 'central control and management actually abides'. The Indian Taxation Acts have however defined 'residence' as applied to companies and the English decisions are now of importance in India only as guides for determining (i) what constitutes control and (ii) from what place control is exercised; and accordingly only those decisions which are helpful in determining these points are considered below. It has further to be remembered that all these decisions relate to the control of the business of companies and that in the case of businesses carried on by a firm, an association of persons, individuals, or Hindu undivided families these principles can only be applied with such modifications as the constitution of the latter require.

(1) A company was incorporated in London but the whole of its business was carried on in India where all its property was situated. The directors met in London. The shareholders also met in London. Dividends were declared in London and the finances were also controlled by the directors from London. In another case the facts were the same except that the company was registered in Italy and the books, account books and banking accounts were kept in Italy. In both these cases the seat of control was held to be London: *Calcutta Jute Mills & Co. Ltd. v. Nicholson* (1 Tax Cas. 83); *Cesena Sulphur Co. Ltd. v. Nicholson* (1 Tax Cas. 88).

(2) In *San Paulo Railway Co. v. Carter* ([1896] A.C. 31; 3 Tax Cas. 409) the control was exercised in London but the business of the railway company in its ordinary sense was carried on outside the United Kingdom. It was held that the company resided in London. The doctrine of control as the test of residence was re-affirmed. With regard to control this case supports the view that control is exercised by the board of directors or other controlling body, not by the shareholders in general meeting or by superintendents or local managers. On this point Lord Watson said (3 Tax Cas. at p. 412; [1896] A.C. at pp. 41-42): "But the substantial fact remains, that the *directors* subject to any resolutions which may be passed for their guidance by the members of the company are vested with the sole right to manage and control every department of its affairs...The only persons who can with propriety be described as carrying on the trade of the company are its *directors*, who for all the purpose of the management and administration are the company itself".

(3) In *De Beers Consolidated Mines Ltd. v. Howe* ([1906] A.C. 451; 5 Tax Cas. 139), a company was registered in South Africa, its head office was there, and the shareholders met and elected the directors

there. Its products were sold through a London Syndicate. Its directors met both in South Africa and at London, but a majority of the directors resided at London and as a fact the affairs of the company were controlled and managed from London by them. In a celebrated judgment, the House of Lords affirmed the doctrine that a company resides where the 'central management and control actually abides.'" The Lord Chancellor also said that it is a question of fact whether a case falls within this rule and that is to be determined by a scrutiny of the course of business and trading.

(4) A gentleman in Aberdeen had a business at Toronto. He did not interfere with it; he had there, managers as salesmen or managers of his shop, who did not have powers of attorney but had full powers to carry on the business. At any moment he might have interfered with them, but he did not. It was held that the business was controlled and so really carried on in Scotland: *Ogilvie v. Kitton* (5 Tax Cas. 338). Lord Darling said in this case that even though the proprietor had not even in a single instance as a matter of fact attempted to exercise his control or gave directions even about the details "yet the right of control is there all the time and might be exercised at any moment. It is a matter as it seems to me, of the power and right, and not of the actual exercise of right or power". This passage is quoted by Rowlatt, J., in *Mitchell v. Noble* (11 Tax Cas. at p. 111). There is an observation of Lord Parker in the *Egyptian Hotel's case* (6 Tax Cas. 152 and 542) that 'it is not what they have power to do but what they have actually done which is of importance', but as Rowlatt, J., has pointed out, though it may at first sight look as if it were in conflict with what Lord Darling had said in *Ogilvie v. Kitton*, Lord Parker has never quarrelled with that case and when the context is looked at, it is clear that Lord Parker was referring to the powers over finance and so on of the London Board. He was not referring to powers of actually conducting the trade which they had not got, but to powers which indirectly they might use so as to put an end to the state of affairs as it was then existing. Lord Sumner referred to the case of *Ogilvie v. Kitton* with approval and said that passive oversight and tacit control are sufficient.

(5) An English company was formed for acquiring all the shares of an American company except the qualification shares of the American company's directors. By the bye-laws of the latter its directors had the general management and control. The trade books and accounts were kept in America, the accounts were audited each year in America by an accountant sent out by the English company. A balance sheet was forwarded each year to the English company and the directors of the latter determined the rate of dividend to be declared and the directors of the American company declared dividends accordingly. The directors of the English company then declared a dividend of the English company. It was held that the English company carried on business in America on the ground that, although theoretically and actually the business of the American company was carried on by the American directors, and the English company had no legal or direct control, the English company was formed for carrying on and did carry on the

business of managing the affairs of the American company, and they did practically control the business carried on by the American company. Bruce, J., further said: "I was struck by the argument that the legal right to control the American business must rest with the directors of the American company, but I am satisfied on the facts that the real and substantial control of the American business was exercised by the English directors . . . Looking at the matter as a practical business question, I cannot bring myself to the conclusion that the American directors whose status is merely that of managers of the breweries, and nothing more, did exercise control over the business independently of the influence of the English directors." : *St. Louis Breweries Ltd. v. Aphorpe* (4 Tax Cas. 111). But see *Kodak Ltd. v. Clark* (4 Tax Cas. 549) and *Stanley v. Gramophone Co.* (5 Tax Cas. 358) in which a somewhat different view is taken and the *Breweries' Case* is explained.

(6) The other important cases are the decisions of the House of Lords in the *Egyptian Hotels Ltd. v. Mitchell* [1918] (A.C. 1022), *New Zealand Shipping Co. v. Stephens* (5 Tax Cas. 553), *Swedish Central Railway Co. v. Thompson* (9 Tax Cas. 342) and *Todd v. Egyptian Delta Land Co.* (14 Tax Cas. 119).

Discontinuance of business.—Where a person carried on two businesses during the standard period and discontinued one of them before the chargeable accounting period, it is necessary to secure that the profits, loss and capital of the discontinued business should be left out of account in determining the standard profits. The words "during the chargeable accounting period" clarify the point that a business which has been discontinued before the chargeable accounting period is not a business to which the Act applies.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period:

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease:

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying

on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

(a) the “previous year” as determined under Section 2 of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day March 1938; or

(b) the “previous year” as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or

(c) the “previous year” as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or

(d) the “previous year” as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of Section 13 [or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section]¹, the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

(1) The words within square brackets were added by the Excess Profits Tax (Amendment) Act, 1940.

[Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods ;

(b) shall exclude any further application under this sub-section.]¹

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum :

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

Scope of the Section.—Excess profits tax is payable under Section 3 on the amount by which the profits during any chargeable accounting period exceed the *standard profits*. The determination of the standard profits of the business is therefore a matter of considerable importance in every excess profits tax assessment. This section lays down the following provisions relating to standard profits :—

Sub-sec. (1) explains what standard profits are generally and makes special provision for the following cases : (i) where there is a decrease or increase of capital and (ii) for businesses started on or after March 31, 1936.

Sub-sec. (2) specifies the ' standard periods ' with reference to which standard profits should be computed.

Sub-sec. (3) gives power to the Board of Referees to determine standard profits in hard cases.

Sub-sec. (4) fixes the minimum standard profits at Rs. 36,000 ; and

Sub-sec. (5) provides for cases affected by the separation of Burma from India.

The Principle of Standard Profits.—Section 6 is based upon Sec. 13 of the Finance (No. 2) Act of 1939 which introduced the new principle of standard profits based on pre-war *profits* in preference to the principle of pre-war standard based on the capital employed in the business,

1. The words within square brackets were added by the Excess Profits Tax (Amendment) Act, 1940.

Referring to the present principle, Viscount Simon in introducing the Finance (No. 2) Act of 1939, said as follows: "I claim that in adopting the method which we followed in the Armament Profits Duty, instead of somewhat slavishly imitating the old excess profits duty of 20 years ago, Parliament has made an improvement. It is undoubtedly a better scheme.....The old excess profits duty of Mr. McKenna's Finance (No. 2) Act of 1915 made much use of a pre-war standard not built up by an examination of profits but by ascertaining what was the amount of capital employed in the business, and by allowing a certain return on that and treating it as the pre-war standard. It did in practice produce the most frightful complications. I am confident that the system which we adopted in the spring of this year of relying on a pre-war standard based on profits is much better and more practical than the old system".

Legislative history of the Section.—(i) *Changes made by the Select Committee*: The changes made in the Bill by the Select Committee are referred to in the following notes submitted by them to Section 6. "We have by our amendment of sub-clause (2) provided as an additional option that the previous year as determined for the year ending on the 31st day of March, 1940, combined with that for the year ending on the 31st day of March, 1939, may be taken as a standard period, thus affording a considerable advantage to those businesses which made good profits during that period. Our amendment of sub-clause (1) is intended to provide that a business started after the 31st day of March, 1936, may at its option take as the standard profits either the profits of the standard period, where it has been in existence long enough to have a standard period, or the statutory percentage of the capital employed in the business. The first change made in sub-clause (3) has the effect of extending the right of applying to the Board of Referees to any business which has been in existence long enough to have a standard period. We have also substituted the words "at the beginning of that period" for the word "then" which did not indicate with sufficient definiteness the point of time referred to. The proviso has been amended so as to substitute the statutory percentage for a fixed percentage on share capital as the measure of the relief which may be granted. In sub-clause (4) we have raised the exemption limit from 20,000 to 30,000 rupees. We have inserted a new sub-clause (5) to provide that profits made in Burma during the period when Burma was included in British India should not be included in the standard profits, unless they are also included subsequently in the profits of the chargeable accounting period, which of necessity falls within a time when Burma is no longer a part of British India."

(ii) *In the Legislative Assembly*.—Proposals were made to give the option of statutory percentage to all businesses, including old businesses, to include companies started after March 31, 1934 among new companies, to give the option of statutory percentage to foreign businesses, and to provide for protected industries. These were all negatived. The motion to raise the minimum limit to Rs. 36,000 was accepted: See *Legislative Assembly Debates*.

(iii) *In the Council of State.*—In the second proviso to sub-section (1) the words 'which was commenced on or after' were substituted for 'which was not in existence before' so as to make it clear that the proviso applies to businesses referred to in Sec. 8 (1).

(iv) *By the Amendment Act of 1940.*—The Excess Profits Tax (Amendment) Act of 1940 introduced the last proviso to sub-section (3) for providing that a determination by the Board of Referees shall have effect with respect to all subsequent chargeable accounting periods and shall exclude further applications. It also added the words "or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section" in the earlier part of sub-section (3).

Scheme of taxation summarised.—In brief, the method adopted by the present Act for ascertaining excess profits is to compare the standard profits, that is the normal profits, with actual profits, that is war profits, throughout the whole period for which the tax is in force and to impose the tax on the excess, if any. It is important to remember that the tax is a tax not on the yearly excess but on the excess throughout the whole period for which the tax is to be in force. Old businesses have a wide choice of years in respect of which standard profits are computed. They can choose either 1935-36 or 1936-37, or 1935-36 and 1937-38, or 1936-37 and 1937-38, or 1937-38 and 1938-39. Businesses which were commenced on or after the 31st day of March 1936, have the option to choose the profits of a standard period or the amount arrived at by taking a statutory percentage of capital employed in the business. This percentage is 8 per cent. in the case of companies which are not director-controlled and in respect of the share of the capital of such companies in firms of which they are members, and 10 per cent. in the case of other businesses. Businesses commenced after the 1st July 1938 will not have been in existence long enough to have a standard period. They have to adopt the statutory percentage basis, but they are given the substantial concession of an increase of 2 in the percentage in each case. The standard profits of such new businesses will in the case of a company be 10 per cent. on the capital employed and in other cases 12 per cent. on the capital employed. In the case of all businesses, both old and new the statutory percentage will be allowed on all increases of capital.

Two measures of standard profits.—There are two measures for determining the standard profits, namely, (i) the *profits of the standard period* and (ii) the *statutory percentage* on the average amount of capital employed in the business. The former is adopted in the case of businesses in respect of which a standard period is available and the latter in the case of businesses for which no standard period is available. Businesses commenced on or after March 31, 1936, for which a standard period is available are allowed an option to choose either the profits standard or the percentage standard. Businesses started before this date are not allowed this option but have to follow the profits standard. But the Board of Referees are empowered to determine the standard profits in hard or difficult cases at an amount higher than the standard profits based on the profits of the standard period.

Examples of Computation.—Notes and instructions issued by the Central Board of Revenue contain examples and illustrations as to method of computing standard profits. See para 54.

We shall now consider the five sub-sections one by one.

Sub-section (1): Standard profits explained.—This sub-section *first* deals with the measure of standard profits in the case of businesses in respect of which a standard period is available, *secondly* with increase or decrease of capital, and *thirdly* with new businesses, *i.e.*, businesses commenced on or after March 31, 1936.

Before dealing with these, the words 'in relation to any chargeable accounting period' require notice. These words give a right to the subject, in relation to each chargeable accounting period to choose the most advantageous method of computing the standard profits; in other words the tax-payer is not bound to stick to the same standard period which he has chosen with respect to any chargeable accounting period, for subsequent chargeable accounting periods: See *Stein and Marks, Excess Profits Tax*, p. 31.

(i) *Businesses for which a standard period is available.*—For these businesses the standard profits are an amount bearing to the profits of the business during the standard period the same proportion as the chargeable accounting period bears to the standard period. In the language of mathematicians, Standard profits: Profits of standard period:: Chargeable accounting period: Standard period. These businesses have no option to adopt the percentage standard.

(ii) *Increase or decrease of capital.*—Where the average amount of capital employed in the chargeable accounting period is greater or less than that employed during the standard period the amount of standard profits determined as stated above must be increased or decreased by applying the statutory percentage to the amount of such increase or decrease.

(iii) *Businesses commenced on or after March 31, 1936.*—An option to adopt the basis of statutory percentage is given to businesses commenced on or after March 31, 1936. The standard profits will in such a case be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during the chargeable accounting period.

The principles for ascertaining the *date of commencement of a business* and the case law thereon are discussed *infra* at p. 96.

Sub-section (2): Standard period.—For the purpose of computing standard profits the Act has specified four standard periods and the assessee may at his option elect any of these periods:—

1. previous year for the assessment year 1936-37 or the previous year for 1937-38.
2. previous year for 1936-37 and that for 1938-39.
3. previous year for 1937-38 and that for 1938-39.
4. previous year for 1938-39 and that for 1939-40.

The last alternative was added by the Select Committee to afford some advantage to those businesses which received good profits in 1937-38 and 1938-39.

The profits of the standard period which has been elected by the assessee have to be computed and standard profits will be an amount

which bears to the profits of this period the same proportion as the chargeable accounting period bears to this standard period.

Minimum length of standard period.—The Indian Act contains a further provision relating to the standard period, namely, that in no case shall any period less than 9 months be taken as a standard period.

Previous year.—This is defined in the Indian Income-tax Act, Section 2 (11). It means in respect of any separate source of income the twelve months ending on the 31st day of March next preceding the year for which assessment is to be made or if the accounts of the assessee have been made up to a date within the said twelve months, in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up. For notes on this definition see 4th Edition of A. N. AIYAR'S *Commentary on the Indian Income-tax Act*, pp. 73-78. Where the accounts of branches of two or more businesses which are to be treated as one are made up at different dates previous year means the actual previous year for each separate business or branch.

Sub-section (3) : Determination of standard profits by Board of Referees.—As it is probable that with regard to particular businesses the statutory standards may not be fair and may lead to a figure less than might reasonably be expected, provision has been made for determination of the standard profits by Boards of Referees and power has been given to the Boards to arrive at a higher amount as the profits of the standard period. The sub-rule has no application where the percentage standard is chosen by the assessee.

Application to the Board may become necessary in the case of business undertakings which were in the process of development and had not earned what would be considered a reasonable standard of profits and generally businesses suffering from industrial depression, having made a small profit or having even suffered losses beyond reasonable expectation. All these kinds of businesses can apply under this clause.

(i) *Procedure.*—The procedure to be followed is as follows:—

(i) Application should be made to the Excess Profits Tax Officer by the person carrying on the business within the period specified in the notice issued under Section 13 (1), *i.e.*, the notice for submitting a return of profits and of standard profits. This period will be not less than 60 days from the date of service of the notice. If the Excess Profits Tax Officer has extended the period fixed for delivery of the return under the proviso to Section 13 (1), the application can be made within the extended period.

(ii) The Excess Profits Tax Officer will then refer the matter to the Board of Referees.

(iii) The applicant must satisfy the Board that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected.

(iv) If the Board is so satisfied it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just.

(ii) *Powers of the Board.*—The function of the Board under this provision is not a power to *fix* the standard profits but only a power to *direct* that the standard profits shall be computed as if the profits were such greater amount as it thinks just. The Board may determine the basic figure for ascertaining the standard profits. That figure may have to be adjusted in order to allow for an increase or decrease in the amount of the capital employed in the business. Such adjustments will have to be made by reference to the statutory percentages. The Board of Referees have no power to vary these percentages.

The powers of the Board are discretionary, and they are not subject to any control by the Income-tax Department or the Central Board of Revenue. But before the discretion is exercised the Board must be satisfied that "*profits of the business* were less than at the beginning of that period, might have been reasonably expected." Under the corresponding provision of the Finance (No. 2) Act of 1939, Sec. 13 (7), the Board has to be satisfied that "*the rate of profits or the volume of business* was less than might then have been reasonably expected." There is thus a substantial difference between the provisions of English and Indian Acts. The English Act merely relates to fall in the rate of profit or the volume of business. The Indian Act is much wider and more favourable to the tax-payer.

Except for the limits prescribed in the following proviso the Board of Referees are not bound to follow any special rules or methods for ascertaining the amount. They can determine such amount as they think just.

(iii) *Limitation on powers.*—The only limitation on the powers of the Board in determining the amount is that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business, unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

In the original Bill the maximum amount which could be allowed was in the case of a business carried on by a company an amount sufficient to provide dividends for the standard period (a) on the paid up ordinary share capital of the company at the rate of 6% per annum and (b) on any other paid up share capital of the company at the fixed rate per annum payable thereon. There was no limit in the case of other businesses. The Bill followed the provisions of the Finance (No. 2) Act, 1939: *vide* the proviso to sec. 13 (7). In the Select Committee the proviso was amended by substituting for a percentage on the share capital, the statutory percentage on the average amount of capital employed in the business and the maximum was made applicable to all businesses, not only businesses carried on by companies. Under the English law in the case of businesses carried on by persons other than companies even now there is no limit to the amount at which the Board may arrive.

(iv) *Specific cause peculiar to the business.*—Where the Board is satisfied that owing to some specific cause peculiar to the business a greater amount should be allowed, the limit prescribed above can be ignored and the Board can allow an amount greater than the statutory percentage on the average capital. The words "*specific cause*" are

somewhat ambiguous. Specific is opposed to generic and the underlying idea seems to be that the cause must be one pertaining to the particular business in question in contradistinction to a cause which applies to businesses of the same class. The words 'peculiar' and 'the business' further emphasise the same idea. 'The business' here refers to the individual business as distinct from businesses of the class to which it belongs. The expression 'specific cause' has been interpreted by English Courts in connection with Rule 11 of Cases I and II of Schedule D of the English Income-tax Act which refers to fall of profits from some specific cause. These cases merely consider the meaning of the abovesaid expression as applied to fall of profits and should be applied with great caution since this expression is used in the Excess Profits Tax Act in a different and wider context. Under this Act a greater amount may be allowed if there is any specific cause peculiar to the business, not merely where there has been a fall of profits from some specific cause. The cases referred to above are *Commissioners of Inland Revenue v. Farie* (16 Sc. L.R. 189), *Ryhope Coal Co. v. Foyer* (1 Tax Cas. 343), *Elliot v. The Duchess Mill* (11 Tax Cas. 56), *Stewart and Young v. Walker* (11 Tax Cas. 123), *Commissioners of Inland Revenue v. Alexander Frew & Co. Ltd.* (16 Tax Cas. 355) and *Fiat (England) Ltd. v. Williams* (17 Tax Cas. 105). These cases are considered below at pp. 93-96.

(v) *Finality of decisions.*—The last proviso to sub-section (3) was inserted by the Excess Profits Tax (Amendment) Act of 1940 to give finality to the decisions of the Board and prevent fresh applications for each subsequent chargeable accounting period. Once the standard profits are fixed by an application to the Board the amount they arrive at will apply for all subsequent years.

(vi) *Determination of standard profits by the Central Board of Revenue.*—In this connection the provisions of Section 26 (1) of the Act require notice. Under this clause if no relief or insufficient relief has been granted under Section 6 (3) by the Board of Referees, the Central Board of Revenue has power to direct that the standard profits shall be computed to be such greater amount as it may direct. See Section 26 (1) and notes to that section.

Sub section (4): Minimum standard profits.—After much discussion in the Select Committee and the Assembly the minimum standard profits was finally fixed at Rs. 36,000. This amount has to be increased or decreased according as the chargeable accounting period is greater or less than one year.

Sub section (5): Separation of Burma.—As Burma was separated from India in 1937 and the standard periods include years before the separation, this sub-section was added by the Select Committee. The object is obvious.

Decisions: (1) Meaning of 'Specific Cause.'—The meaning of 'specific cause' was first considered in *Inland Revenue v. Farie*, (16 Scot. L.R. 189) where it was held that depression in the coal trade was a 'specific cause' within the meaning of Rule 11. In *Ryhope Coal Co. v. Foyer* (1 Tax Cas. 343) Grove, J., said: "I expressed during the argument very considerable doubt whether the phrase 'specific cause' could.

apply to the ordinary fluctuations of trade. I certainly do not adopt the arguments of the appellants here, and say, that 'specific cause' means specified cause. I do not think that is the proper meaning of the word 'specific' either in grammar or within this Act. A specific thing, and a specified thing, are to my mind totally different; I think 'specific cause' must be something capable of expression, but also something exceptional, it must not be the ordinary fluctuation incident to every business. The Scotch Court in the case that I have mentioned held that the depression of trade was a specific cause. In one sense I agree with them, except that I should put it thus, that depression of trade may be, but is not necessarily a specific cause. It must be, to my mind, and to make it a specific cause, something unusual, exceptional, extraordinary". In this case it was found that there was an extraordinary depression in the iron and coal trades. The meaning of 'specific cause' was considered at greater length in *Elliot v. Duchess Mill Ltd.* (11 Tax Cas. 56). Rowlatt, J., held that where there is a phenomenal trade depression, affecting an individual, however many other individuals and whatever trade it affects that may be at any rate a specific cause within the meaning of the Act. In the Court of Appeal, Lord Hanworth, M.R., after referring to Section 26 of the Finance Act of 1921 said (at p. 75), "It appears to give some indication that 'specific cause' might be made use of generally and widely; in other words, that 'specific cause' was not a special idiosyncrasy of the trade but one which might open the door to relief where the trade was carried on and affected by something which was of general application but, which yet could be relied upon as a specific cause". Referring to the meaning of 'specific cause' the Master of the Rolls again said: "Does it mean some cause which is peculiar and individual to the subject who puts it forward as contrasted with the case of those who are his colleagues in the trade and cannot establish that the cause indicated affects them; or does it mean a cause which can be pointed out and identified, which affects the subject who claims the relief, though it is one which also affects traders in a district or area similarly and may be general to a large number of traders, indeed common to a number of persons in the same trades or in allied or other trades?" After referring to the statute and the cases cited above, Lord Hanworth, M.R., answered the question thus: "That decision of Mr. Justice Grove and Mr. Justice Lindley has held the field since the year 1881...It appears to me that the cause that is referred to is not necessarily one which is peculiar to the subject who claims relief but is one which may possibly be relied upon by a greater number of traders, and is general in that sense". Lord Justice Scrutton with whom Romer, L.J., completely agreed, has discussed the meaning of 'specific cause' elaborately in the passage which is reproduced below:—

"In my view 'specific' means stated with precision as opposed to a mere statement of fact without assigning a precise or determined cause for it. I find that, leaving out the medical, pathological, zoological and botanical meanings of "specific" given in Murray's Dictionary and turning to the more ordinary English, it is "precise or exact in respect of fulfilment of conditions or terms; definite, explicit, exactly

named or indicated or capable of being so; precise, particular". I should have thought that was the more ordinary meaning of "specific" and I myself should not have agreed with Mr. Justice Grove when he says that specific does not mean specified—that the two things are different. I should have thought they were the same thing, one in the form of a verb and the other in the form of an adjective. Mr. Justice Grove says that he thinks specific means abnormal. Now I do not think that the word "specific" can ever mean abnormal. I should have thought, if "specific" means anything like that, it probably means normal—the normal qualities of the species and not the abnormal qualities of the species. But I can quite see how you can bring abnormality into the question of specific cause. A man wants relief from the tax because his profits have dropped, and if when you say "why?" he simply says to you "They have dropped because I have done less business" he is simply repeating his original statement that the profits have dropped over again—they have dropped because there is less material for them to come out of. If you are simply saying "My profits have dropped because I have sold less goods", I think you are merely repeating the same thing over and over again. It may be therefore that when Parliament used the phrase that they must have dropped from a specific cause, it must have meant that you should say something more than that they have dropped in the ordinary course of business, having regard to the amount of business done. In that sense you can bring in an abnormal trade fluctuation as compared with the ordinary trade fluctuations. Only in that sense should I think you can extract abnormality out of the word "specific" which does not, in my view, ever mean abnormal by itself, but may possibly in its context have the result that you have to look for abnormality. In my view "specific cause" in itself means a precisely stated definite cause as distinguished from a mere statement "I have lost profits because I have made less money" or words to that effect. I can quite see that it is a question of degree when the fluctuation of trade becomes so extensive that you can treat it as given something more than a mere statement "I have made less profits because I have done less business". But I should not myself assent to the rather narrow view which I think Mr. Justice Grove has taken of the meaning of "specific". Lord Lindley did not define at all what he meant by "specific" except to say that he could not interfere with the Commissioners who had found that an extraordinary depression was a "specific cause". With some of Mr. Justice Grove's language I think I should disagree, but the result remains the same. If I am right in my view of "specific" still less can I interfere with the decision of the Commissioners than if Mr. Justice Grove's view is the right view of "specific". In either case it is not possible in my view to interfere with the view of the Commissioners."

In *Stewart & Young v. Walker* (12 Tax Cas. 123) it was held that an extraordinary rise in the price of raw materials and in the growth of bad debts might be 'specific cause' within the meaning of Rule 11 but on the facts these were not the substantial cause of the falling off of profits. With regard to the meaning of 'specific cause' the Lord President (Clyde) said (p. 129): "The expression 'specific cause' is one which is far from being self-explanatory. I think it designates

something which can be precisely identified—something which one can put one's finger upon—and something between which and the falling short of profits it is possible clearly to trace a casual relation. Moreover, I think that, by a 'specific cause', the Rule intends something which is different from the ordinary variations and vicissitudes to which business and trade are subject. Further than that I do not go, and I doubt very much if it would be safe to go".

Lord Sands said: "I take it that the true meaning of this requirement is, that there must be some exceptional circumstance which can be clearly identified and to which the shortage of profits can be attributed. It is hardly maintainable, that mere fluctuations of price such as may occur every year are exceptional circumstances. On the other hand it is, I think, conceded that an extraordinary rise or fall in price might be an exceptional circumstance, or, in other words, a 'specific cause' within the meaning of the Act".

In *A. and G. Anderson v. Commissioners of Inland Revenue* (16 Tax Cas. 355) the Lord President (Clyde) said (at p. 367) that a *specific* cause stands in contrast with a *generic* one: 'a specific cause' he said 'must at least be such in its character and operation as to distinguish it from *generic* causes'. Lord Blackburn said (p. 375) that the words '*specific cause*' do not mean merely a cause which can be specified but imply a special and unusual cause not likely to occur from year to year in the carrying on of the business, and that it cannot be intended to refer to every day fluctuations in trade. The House of Lords refrained from giving a legal definition of the expression but held that where strikes had resulted in large profits the cessation of such conditions was a specific cause.

The latest decision on the subject is *Fiat (England) Ltd. v. Williams* (17 Tax Cas. 105) in which the Commissioner's finding that abnormal trade competition which was alleged in the case was not 'a specific cause' was upheld. Finlay, J., applied the definitions of Scrutton, L.J., in (11 Tax Cas. 56) and of Lord Sands in (11 Tax Cas. 129) quoted above and said: "To make specific cause you want something beyond ordinary fluctuations. Ordinary fluctuations, the ordinary ups and downs of trade, are not enough. You want something definite, something specific. It seems to me to be obvious that in this particular class of case there must be a large amount of ground where the question must essentially be one of fact and of degree. It is useless to endeavour to lay down rules more precise than those which have been laid down in various judgments, and it necessarily becomes a question for the Commissioners, taking note of the particular facts which have been proved in the case before them, to apply the authorities".

Decisions: (11) Date of commencement of business.—As special treatment is accorded to businesses commenced on or after 31st March 1936 the question what is the date of commencement of the business may often arise for determination. The line which separates preparations for commencement of business from actual commencement of business is often difficult to discern. Again, when one business ceases and a similar business is carried on by another, the difficult question whether the second business is a new one or a mere continuation of the old one

may also arise. It can at the outset be laid down that the date of commencement of a business is a question of fact, and that if there is evidence to support the finding and the Commissioners have not misdirected themselves, the Courts cannot interfere: *Cannop Coal Co. Ltd., v. Commissioners of Inland Revenue* (12 Tax Cas. 31). In this case a company was formed in 1906 for mining coal. The sinking of pits was commenced in that year but was completed only in 1911 and the output from the pits until 1912 was negligible. In 1908 however, a drift had been made and from the next year substantial quantity of coal was sold. On being assessed to excess profits duty the company contended that the business was really commenced only in April or July 1912 and that under the provisions of the Act of 1915 it was entitled to a pre-war standard on the profits of the last pre-war trade year, but the Commissioners held that the business was commenced long before 1912 and based the pre-war standard on the profits of two of the last three pre-war trade years. It was held that the question of the date of commencement of the business of the company was one of fact and there was evidence on which the Commissioners could come to their conclusion. In *Sutherland v. Commissioners of Inland Revenue* (12 Tax Cas. 63) a steam drifter which was acquired and was being used for fishing industry was compulsorily taken over by the Admiralty and hired for Admiralty purpose. It was contended that under the hiring a new and entirely different business was commenced but the High Court held that notwithstanding the different uses to which the ship was put and the alterations made in it, the owner was carrying on the same trade throughout of employing the ship for profit. Lord Mackenzie said: "where you have a definite commercial asset which has been used in the pre-war period for purposes of profit, and the same commercial asset is employed for profit during the accounting period, then that brings the earnings within the sweep of the Act, and it does not matter that there is the substitution of a different product from the use of the commercial asset in the accounting period from what the product was during the pre-war period". The difference between commencement and preparation is discussed in *Birmingham Cattle By-products Co. v. Inland Revenue* (12 Tax Cas. 92). A company was incorporated on the 20th of June 1913 to carry on the business of making some use of the by-products of the butcher's trade. The company took over agreements from butchers and the directors went about to see various places where similar businesses were carried on. They entered into contracts for erection of work and the works were erected in July 1913. They then purchased machinery and plant and entered into agreements for purchase of products. They began to take raw materials and to turn out their products in October 1913. Rowlatt, J., held that the company commenced business only in October 1913, all the previous acts being mere preparations for commencing business. The fact that the company were acting within their powers in the previous acts was held to be immaterial. This case further shows that a company is not bound by the date which is recorded in its minutes as the date on which business has been commenced, but the substance of the matter has to be looked into.

The difference between succession to an old business and commencement of a new business is illustrated by *Mills from Emelie Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 73). A lady who carried on a millinery business left the business, and her business premises were pulled down. She handed over to some of her saleswomen order books containing the names of customers who had effected business through the saleswomen with a view to help them to make new business. Three of these commenced business in the same street and took in some of the old employees. No assets, stock, book debts, contracts or liabilities of the old business were taken over. It was held that this business was a new one and not a continuation of the old one.

On the question of identity of business the cases cited at pp. 440 to 448 of A. N. AIYAR's *Commentary on the Indian Income-tax Act* (4th Edition) under Sec. 26 (2) may also be referred to.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

Relief on occurrence of deficiency of profits.

(a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise ;

(b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

¹ [Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits

(1) The provisos were added by the E. P. T. (Amendment) Act, 1941.

chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

(a) the application shall be treated as provisional only; and

(b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct;

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.]

Principle underlying the section.—Viscount Simon, who introduced the Finance (No. 2) Act of 1939 of the United Kingdom has stated clearly the principle underlying this section in a passage which runs as follows :

“As in the case of excess profits duty, clause 15 of the Bill (Section 15 of the Act) provides for relief in respect of what are called deficiencies, and I think this is absolutely necessary. The matter may be put bluntly in this way, that although a business may have paid excess profits tax in the first year, it would be entitled, when another year had gone by to ask that the calculation should be made in respect

of the whole period, so that if its profits in the first year had been followed by a severe loss or a drop it would not be treated unjustly. Otherwise injustice would be done. Thanks, however, to this provision, the taxpayer will be able to obtain relief for any other year in which the profits have fallen short. You may put it broadly like this. The aggregate amount of excess profits tax payable throughout the whole operation of the tax will be the tax corresponding with the net excess profit over the whole period, after allowing for any falling off of profits in any year."

History of the Section.—Section 38 (3) of the Finance (No. 2) Act of 1915 provided for a similar form of relief in the case of excess profits duty. Section 15 of the Act of 1939 provides for such relief in the case of excess profits tax. Sub-section (1) of that section defines deficiency of profits and sub-section (2) lays down the nature of the relief to be given. In the Indian Act, the latter portion of sub-section (1) of the 1939 Act is enacted in Section 2 (9) as the definition of 'deficiency of profits.' The former portion which has been omitted in the Indian Act runs as follows: "For the purposes of this Part of this Act a deficiency of profits shall be deemed to have occurred in a trade or business in any chargeable accounting period if the profits arising from the trade or business in that period are less than the standard profits, or if a loss is sustained in the trade or business in that period." This is perhaps regarded by the Indian Legislature as redundant. Sub-section (2) of Section 15 of the English Act corresponds to the present section.

The Select Committee which considered the Indian Excess Profits Tax Bill added the words 'or where there is no previous chargeable accounting period', in para (b) of this section to cover the case where a deficiency occurs in the first chargeable accounting period and added also the consequential words 'or the whole of the deficiency as the case may be.'

The provisoes were added by the Amendment Act of 1941. For the object of the provisoes see page 108 *infra*.

Deficiency of profits explained.—'Deficiency of profits' is defined in Section 2 (9) of the Act. There is a deficiency (i) where profits made in the period fall short of the standard profits or (ii) where a loss has been incurred, in that period. The amount of deficiency is in the first case the amount by which the profits fall short of the standard profits and in the second case, the amount of the loss added to the amount of the standard profits. 'Profits' means profits as determined in accordance with the First Schedule and 'Loss' means a loss computed in the same manner as, for the purposes of the Act, profits are to be computed: *vide* Section 2 (16).

Meaning of Loss: (i) *Loss does not include capital loss*—The rule that in computing profits capital losses cannot be deducted but only trading losses is as much applicable to excess profits tax as to income-tax. In *C.M. Legg & Son, Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 391) it was argued that 'a loss in his trade or business' in Section 38 (3) of the Act of 1915 was wide enough to include capital

losses but this view was negated by the court. Molony, C.J., said : 'When the scheme of the Act is examined it would be found impossible to give effect to such a contention, because the whole of the scheme of excess profits duty is based upon the same principles as the assessment of income-tax subject to certain modifications which are stated in the Schedule'.

Money thrown into a connected business without security in order to keep that business alive, and lost, is a capital loss: *Commissioners of Inland Revenue v. Huntley Palmers Ltd.* (12 Tax Cas. 1209) following the *Crown Spelter Case* (5 Tax Cas. 327) and *Commissioners of Inland Revenue v. Charles Marsden & Co.* (12 Tax Cas. 217). Loss of capital which results from loss incurred in the course of business is a trading loss, for what is lost is lost in the income account. This is illustrated by *Bernhard v. Gahan* (13 Tax Cas. 723). An exporter of cloth used to finance his shipments by drawing bills on the buyers and borrowing from a Bank in London on the security of the bills and shipping documents. In 1920 a buyer became unable to meet his acceptances and the Bank held the exporter liable to the extent of £22,410 and in the assessment for the year ended March 31, 1921, he was allowed to deduct this sum in computing his profits for that year. After some negotiations, at the end of 1922 the bank accepted £8,000 in settlement of its claim. Additional assessments were thereupon made to bring into charge £14,410 previously allowed in excess. The Court of Appeal held, confirming Rowlatt, J., that the transactions with the Bank were part of the business, the loss was a trading loss and the computations for excess profits duty and income-tax must be reopened and adjusted with reference to the actual amount of loss, *viz.*, £8,000.

(ii) *Loss must be one arising out of the business.*—The loss must be a commercial loss, that is a loss in the trading. The fact that the loss would not have been incurred if the trade had not been carried on is not sufficient. It is not enough that a disbursement is made in the course of, or arises out of, or is connected with, the trade, or is made out of the profits of the trade. It must be an expenditure incurred for the purpose of enabling the person to carry on the business and earn the profits: *Commissioners of Inland Revenue v. E.C. Warnes & Co.* (12 Tax Cas. 227); *Commissioners of Inland Revenue v. Alexander Von Glen* (12 Tax Cas. 553).

(iii) *Loss must be a loss of the chargeable accounting period.*—The Act refers to a deficiency in the chargeable accounting period. The exact period in which a loss is incurred is often difficult to determine. The principles for determining whether a loss is a loss of the chargeable accounting period in question are similar to those for determining to what particular accounting period a trading receipt relates and have already been considered along with the cases decided under Section 38 (3) of the Act of 1915 at pp. 53 to 75 *supra*. The case of *Edward Collins & Sons Ltd.* (12 Tax Cas. 73), *Whimster & Co.'s Case* (12 Tax Cas. 818), *Young & Co.'s Case* (12 Tax Cas. 827); and *Hugh T. Barrie's Case* (12 Tax Cas. 1123) referred to there deal with loss.

(iv) *Loss in non-taxable businesses cannot be deducted.*—Loss in a business to which the Act does not apply cannot be deducted in computing the profits: See Schedule 1, Rule 3 (2).

(v) *Loss cannot be carried forward.*—In computing profits for excess profits tax loss cannot be carried forward as laid down in Section 24 (2) of the Indian Income-tax Act: See Schedule I, Rule 3 (3). But a loss which is appropriate to a particular chargeable accounting period may be deducted even though it was not actually made in that period.

Method of giving relief for deficiency.—When there is a deficiency of profits in any chargeable accounting period, paragraph (a) of Section 7 provides that (i) the aggregate of the profits of the preceding accounting periods which have been charged, should be deemed to be reduced by this amount, (ii) the tax payable in respect of the aggregate profits shall be deemed to be reduced accordingly, and (iii) relief necessary to give effect to the reduction will be given by repayment of tax or otherwise. Para (b) provides that if the deficiency exceeds the aggregate chargeable profits of the preceding periods, further relief is given by allowing the taxpayer to set off the balance of the deficiency in reducing the chargeable profits of the subsequent period or periods. Where deficiency occurs in the first chargeable accounting period the whole deficiency may be applied to reduce the profits of the future years.

Amendment Act of 1941.—When the rate was raised to 100% in the United Kingdom by the Finance Act of 1940 a special provision was inserted in Section 15 to provide for the proper working of the section. Similarly, when the Indian Finance Act, 1941, raised the rate of tax to 66⅔ per cent., the two provisos were added to this section.

The effect of these provisos has been thus illustrated by an example in the *Notes on Clauses* to the Amendment Bill.

A concern which makes up its accounts regularly to the 31st December shows the following results:—

Chargeable accounting period of 4 months to 31st December 1939	Excess profits Rs. 20,000 assessed at 60%.
Chargeable accounting period of 12 months to 31st December 1940	Excess profits Rs. 10,000 assessed at 56%.
Chargeable accounting period of 12 months to 31st December 1941	Deficiency Rs. 12,000, apportioned— Rs. 3,000 to the 3 months to 31st March 1941. Rs. 9,000 to the 9 months to 31st December 1941.

Set-off of the Rs. 12,000 deficiency is claimed against the excess profits of previous periods under Section 7 of the Act, and tax is refunded at 50 per cent.—Rs. 6,000, the set-off being, under the clause, provisional only so far as the Rs. 9,000 for the period after the 31st March, 1941, is concerned.

If in the three months ending 31st March, 1942, excess profits arise amounting to Rs. 10,000 they will be chargeable at the rate of

66½ per cent. It would be to the advantage of the assessee to set-off thereagainst, instead of against excess profits chargeable at 50 per cent., the deficiency of Rs. 9,000 of the period of nine months ended 31st December, 1941. This is permitted under the clause and the original provisional set-off would be cancelled while the excess profits chargeable at 66½ per cent. would be reduced. See *Notes and Instructions* for further examples.

Successor's right to claim relief.—This section provides that if a deficiency occurs *in any business*, the profits of *the business* chargeable to tax shall be deemed to be reduced. And Sec. 8 (1) provides that as from the date of any change in the persons carrying on a business the business shall be deemed to have been discontinued and a new business to have been commenced. The combined effect of these two sections is that where there is a change in the persons carrying on a business, no claim to relief under Sec. 7 can be made in respect of deficiency of profits incurred after the change against tax paid during preceding years when there was a profit. But on the other hand, the successor will be entitled to set-off deficiency of profits incurred by him against his future year's profits irrespective of the profits earned in preceding years by his predecessor. The business before the date of succession must be treated as a different business altogether from the business after the date.

Under the earlier Act of 1915 the right to claim relief was held to be a personal right, that is, there was a right to relief only when the person carrying on the business at the time of the incurring of the loss or deficiency was the same as the person who had paid in the times when the business was more prosperous: *Gittus v. Commissioners of Inland Revenue* ([1921] A.C. 81) and *Millington Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 1081). Though the words 'a person proves' and 'his profits' which appeared in Sec. 38 (3) of the Act of 1915 do not appear in the English Act of 1939 or the Indian Act of 1940, the provision in the latter Acts that a new business shall be deemed to have commenced when there is a change of person, leads to the same result. It has been pointed out by responsible bodies in England that this is a rather hard provision.

The Association of British Chambers of Commerce, for example, in their memorandum submitted to the Chancellor of Exchequer said as follows: "The committee feel that the principle of the section (Sec. 16) is harsh and that refusal to permit the right to carry forward the excess or deficiencies prior to the date of purchase is out of place in a system which purports to tax increases in profit alone and adopts the business as the unit for the purposes of levying the tax. That effect of the section is tantamount to levying a further transfer duty on sales of businesses in the guise of the excess profits tax."

It may be noted however, that the Indian Act has permitted the carry forward of deficiencies in the case of death of a partner: *vide* Section 8, sub-section (7).

Succession from father to son etc.—In *Gittus v. Commissioners of Inland Revenue* [1921] (2 A.C. 81) a son who succeeded to his father's business under his father's will sought to set-off against the excess profit

duty exigible from him in respect of an accounting period in which the business belonged to himself, such an amount as would make the total excess profits duty paid during the whole period in which his father and he had successively carried on the business, accord with the profits and losses during that period. On a construction of Section 38 (3) the House of Lords held that the right to set off related only to such losses as were personal to the trader claiming to make the set off. It was realised that this rule involved a hardship where the change was simply a passing down of the business in the family, and Section 36 of the Finance Act, 1922, was therefore enacted in England to treat a predecessor and his successor in a business or in a share of a business as one person, provided (i) the succession was effected by voluntary disposition *inter vivos* made by the predecessor or under the predecessor's will, or on his intestacy and (ii) that the successor stands to the predecessor in a relation of husband or wife or of an ancestor or lineal descendant. The meaning of the words 'voluntary disposition' in Section 36 of the Finance Act of 1922 was the subject of consideration in *R. A. Bird & Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 785; 1925 S. C. 186) but, as there is no such provision in the Indian Act of 1940 or the English Act of 1939, the case is not of much importance in India. The English Act of 1939 and the Indian Act have ignored Section 36 of the Finance Act of 1922. In India the Select Committee introduced a provision recognising the right to carry forward deficiency when a partner dies, but it is incomprehensible why no provision for carry forward of deficiency under Section 7 was made in the case of death of sole owner of a business and succession to him by intestacy, or by will or by voluntary disposition as in the earlier Act.

Set off of loss in one business against profits of another.—It was held in *Birt, Potter & Hughes Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 957) that loss incurred in one business cannot be set off against the profits made in another business even though both the businesses were carried on by the same person. This decision is based on the fact that under the Act of 1915 each business was a separate unit for purposes of excess profits duty. The view expressed in the article in *Taxation* (November 11, 1939) that 'the position appears to be the same for excess profits tax' appears to be incorrect inasmuch as under the 1939 Act all businesses carried on by the same person are to be treated as one business. The Act has imposed only one restriction namely, loss incurred in business to which the Act does not apply shall not be allowed in computing the profits: Schedule I, Rule 2 (3).

- 7-A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of Section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section, shall be

Special provision
for chargeable ac-
counting period
falling partly be-
fore and partly
after the end of
March, 1941.

determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sub-sections—

(a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March ;

(b) “excess profits” means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that Rule 5-A of the First Schedule and Rule 2-A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein ; and, for the purpose of giving relief for deficiencies of profits under Section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the part of the whole period.

Object.—This section which was inserted by the Second Amendment Act of 1941, deals with chargeable accounting periods commencing before and ending after the end of March, 1941, in relation to the

change of basis effected by new rule 5-A of the First Schedule and new rule 2-A of the Second Schedule, in the treatment of borrowed money and the interest thereon. The method adopted is to compute the profits or loss and the standard profits for the whole chargeable accounting period on the old and on the new basis and to take the due proportion of each of the two results.

Example :

Chargeable accounting period of 12 months ending 31st December, 1941—		Rs.
On the old basis, excess profits for the year	...	12,000
On the new basis, <i>i.e.</i> , adopting the new provisions as to treatment of borrowed money and interest, excess profits for the year	...	10,000
The assessment for the whole chargeable accounting period of one year would be—		
		Rs.
$\frac{1}{3}$ year to 31st March, 1941, at Rs. 12,000 = Rs. 3,000 at 50 per cent.	—	1,500
$\frac{2}{3}$ year to 31st December, 1941, at Rs. 10,000 = Rs. 7,600 at 66 $\frac{2}{3}$ per cent	—	5,000
Total E.P.T. chargeable	...	6,500

For further illustrations as to application of Sec. 7A, See *Notes and Instructions*, paras. 24A, 34B and 48A.

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the first day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change, *[and in considering, for the purposes

* The words within brackets were added by the Excess Profits Tax (Amendment) Act, 1940.

of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery], no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

(a) it had been in existence throughout the period during which there were in existence any of the former businesses ;

(b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business ; and

(c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business ;

and, in particular, in computing the capital employed in the resulting business, *[and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery], no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly :

* The words within brackets were added by the Excess Profits Tax (Amendment) Act, 1940.

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board, to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business.

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under Section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

* (8) Where—

(a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued ; or

(b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business ; or

(c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business ; or

(d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer ;

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.

English law.—This section before it was amended in 1940 closely followed Section 16 of the Finance Act of 1939. Sub-section (7) was added by the Indian Legislature. The other changes effected in India are referred to below in their proper places.

The Excess Profits Tax (Amendment) Act, 1940, amended the section in the following ways : in sub-secs. (3) and (4) the words enclosed within square brackets were inserted to make the provisions applicable to the value of acquired assets for the purpose of computing depreciation allowances ; (ii) in sub sec. (5) the words 'subject to any necessary modifications' and in sub-sec. (6) the words 'subject, however to such modifications (including modifications as respects the computation of capital) as he may consider just' were omitted ; and (iii) sub-section (8) was introduced to widen the power to make modifications and for appeals from orders relating to modifications.

Sub section (1) : The general rule stated.—The general rule followed for the purposes of excess profits tax with regard to succession to

business is stated in sub-sec. (1) of this section, *viz.*, that as from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of the Act to have been discontinued and a new business to have been commenced. The principle is the same as that adopted by the Finance Act of 1939. It was found that this general rule required an exception in the case of the computation of the statutory average. The Indian Legislature decided that it was desirable to give the higher statutory percentage allowed by Section 2 (22) only to genuine new businesses and accordingly in the Legislative Assembly for the words 'for the purposes of this Act' which occurred in the Bill, the words 'for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage' were substituted: See *Legislative Assembly Debates*.

The effect of this rule is that when there is change of persons a new chargeable accounting period is automatically started for the business and the chargeable accounting period of the old business automatically ceases, and therefore tax is payable by the person who carried on the business up to the date of change in respect of the profit up to that date, and thereafter by the person who succeeds him. The Select Committee stated that they were given an assurance that a new chargeable accounting period will be deemed to have commenced. It is to be noted that the exception relates only to the computing of the *statutory percentage*, and not to standard profits generally; the general rule applies also to the calculation of standard profits subject to this exception and the following sub-sections. The general rule applies for all the purposes of this Act, especially right to claim deficiencies. The exceptions contained in the sub-sections relate only to *standard profits*. Sub-sec. (7) of the Indian Act relates to deficiencies.

When ownership changes.—In October 1920 a company entered into an agreement with a syndicate for sale of the business. The price was fixed, the agreement was to be completed in six weeks and the accounts were to be taken as on 31st December 1919, *i.e.*, the business was to be taken as sold from that date. In May 1921, the syndicate sold its rights to a new company with the concurrence of the old company and a second agreement was written by which the transfer was to be given effect to from 31st December 1920 instead of 31st December 1919. The question being whether the old company could claim a set off of losses incurred by it in the year 1919 under Section 38 (3) of the Finance Act, 1919, it was held (i) that the business did not change ownership before the agreement of October, 1920, (ii) after this agreement, the business was being carried on by the old company only physically for the purchaser and the old company was not accordingly entitled to maintain a claim under Section 38 (3). Rowlatt, J., said: "where a man has sold his business in this way by an executory contract, by which he has bound himself to sell the business he is no longer within the section".—*Millington Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 1181). This case shows that it may sometimes be difficult to decide when a change in the persons carrying on a business exactly occurs.

Sub-section (2) : Changes in partnership before 1st September 1939.—This sub-section corresponds to sub-section (2) of Section 16 of the Finance (No. 2) Act of 1939.

In the case of a change in a partnership *before* 1st September 1939 consisting in the death or retirement of a partner or the taking in of a new partner, the persons carrying on the business after the change are given the option of treating the business after the change as a continuation of the old one for purposes of computing standard profits, notwithstanding the general rule laid down in sub rule (1). These changes are not regarded to be of as much consequence as other changes in the ownership of concerns. The date was altered to 1st January 1940 by the Assembly but the original date of 1st September 1939 was restored in the Council of State.

Changes occurring *after* 1st September 1939 are not covered by this sub-section but will be governed by the next sub section.

If there has been a change before 1st September 1939 and another change after 1st September 1939, the persons carrying on the business after the latter change will be different from the persons carrying it on after the first change and it is doubtful whether they can avail themselves of the option conferred by sub-section (2).

The sub-section is not clear whether the option once elected will be effective for all subsequent chargeable periods.

Sub-section (3) : Succession after 1st September 1939.—The second exception to the general rule is where the change in the persons carrying on the business occurred after 1st September 1939. The business will in such a case be treated as a continuing business and the standard profits will be ascertained accordingly. In particular in computing the capital employed in the business no regard will be had to the consideration paid for the transfer of the business or its assets on the change of owners. It has been pointed out on behalf of the Government that the sub-section, especially the last portion of it, was not intended to prevent artificial transactions as Section 10 deals with that. The prices of some articles had risen considerably since 1st September 1939 and the Government wanted to prevent allowing a statutory percentage on the inflated capital value. The effect of this is that the assets will have to be valued as if no change had taken place.

Sub-section (4) : Amalgamation after 1st September 1939.—Sub-sec. (4) deals with the method in which standard profits have to be computed where there has been an amalgamation of businesses after 1st September 1939. This sub-section closely follows sub-section (4) of Sec. 16 of the Finance (No. 2) Act of 1939. There is an amalgamation of businesses where the businesses come to be carried on by the same person. Mere acquisition of a right to control, *e.g.*, by acquiring shares, does not result in amalgamation. Such cases would be governed by Sec. 9. The effect of paragraph (a) is that the date of commencement of the resulting business, is the date of commencement of the oldest of the amalgamated businesses, and of paragraphs (b) and (c) is that the other businesses would be treated as having merged in the resulting business, that is, as if they had no separate existence.

Excess Profits Tax (Amendment) Act of 1940.—The words within square brackets in the last paragraph of sub-sec. (4) were added by the Excess Profits Tax (Amendment) Act of 1940. The object is to make the principle of the sub-section apply also to the value of acquired assets for the purpose of computing depreciation allowances. Similar words were added to sub-sec. (3) also.

Sub-section (5): Transfer of part of business after 1st September 1939.—This sub-section provides for cases where a part of a business is transferred as a going concern. This is the converse of amalgamation, although if part is transferred to another person carrying on a business an amalgamation of the part transferred may also result. The policy of the Act is that in such cases each part shall be deemed to be a continuation of the original business and each will be taken to have been commenced on the date of commencement of the original business. The date of breaking up will not be treated as the date of commencement of the part transferred.

Apportionment.—Where a part is transferred and each is treated as a separate business, apportionment of profits and losses, and capital employed and assets has necessarily to be made. This will be done by the Excess Profits Tax Officer in such a way as he deems just.

Appeals.—There is a right of appeal to the Board of Referees from an order of the Excess Profits Tax Officer under this sub-section. The appeal should be presented to the Excess Profits Tax Officer within 45 days of the date of receipt of the notice of the order of apportionment: See *Excess Profits Tax Rules, Rule 17*. The Excess Profits Tax Officer will within 18 days of the receipt of the appeal under Section 8 (5) forward it to the Commissioner for being referred to a Board of Referees for decision and the Commissioner will thereupon appoint a Board of Referees as stated in Rule 3 of the Boards of Referees Rules and he will, in consultation with the Board, fix the time and place of the meeting of the Board and give notice to the appellant and the opposite party. Section 17, proviso, definitely lays down that there shall be no appeal from an order of apportionment to the Assistant Commissioner under that section. For the form of appeal to the Board of Referees see Form E. P. 8 A printed *infra*, Rules and Notifications.

Excess Profits Tax (Amendment) Act, 1940.—The words 'subject to any necessary modifications' which appeared at the end of the first paragraph of the sub-section following the English Act of 1939 was deleted by the Excess Profits Tax (Amendment) Act of 1940, and a fresh sub-section (8) was inserted by the Amendment Act instead, dealing with this matter in detail and providing for such adjustments of capital and profits to be made as will secure a fair comparison of like with like.

Sub-section (6): Transfers between 1st April 1936 and 1st September 1939.—This sub-section corresponds to sub-section (9) of Section 16 of the Finance No. (2) Act of 1939. In the Indian Act the word 'shall' has been used in the place of 'may' and the proviso contained in the English Act conferring a right of appeal to the Board of Referees has been omitted in the Indian Act. The word 'may' in the English Act

was explained during the debates before the House of Commons. It was held to mean practically 'shall' and the Indian Act has made the intention clearer by adopting the word 'shall'. The result is that if the Excess Profits Tax Officer is satisfied that the business transferred was not substantially different from the business carried on after the transfer the concession will be made: See *House of Commons Debates*.

Effect of the sub-section.—The effect of this sub-section is that notwithstanding the provisions of sub-section (1), in the case of a transfer covered by this sub-section the transferred business or part will be treated as if the new owner had been carrying it on from the date of commencement of that business.

Whether the 'main part' of a business has been transferred is, of course, a question of fact.

Amalgamation after 1st April 1936 and before 1st September 1939.—The desirability of adding an explanation to this sub-section to emphasise that the sub-section applies where two or more businesses were amalgamated after 1st April 1936 and before the 1st September 1939 was considered by the Select Committee but they were satisfied that the sub-section already clearly applies to such cases: See *Report of Select Committee*.

Sub-section (7): Death of partner after 1st September 1939: Right to carry forward deficiency.—This sub-section was added by the Select Committee and nothing corresponding to it is to be found in the English Act. This sub-section could have been more appropriately inserted in Section 7 as it relates to granting of relief in respect of deficiency and all the sub-sections to Section 8 relate to computation of standard profits. The hardships caused by the combined operation of Section 7 and sub-section (1) of Section 8 in the case of death of a partner were pointed out in England and this provision has been added by the Select Committee to provide for the carrying over of a deficiency of profits where a change takes place in the persons carrying on a business by reason of the death of a partner after the 1st day of September 1939. Changes in partnership due to retirement of partner or taking in of a new partner do not come within this sub-section.

Sub-section (8): General provisions applicable to previous sub-sections.—This sub-section was inserted by the Excess Profits tax (Amendment) Act of 1940. The provisions of the sub-section read with the Amendments made in sub-secs. (5) and (6) of Sec. 8 make it possible in the case of (i) a change in the constitution of a partnership before the 1st September 1939, (ii) transfer of part of a business on or after 1st September 1939, or (iii) transfer of a business or the main part of it, after 1st April 1936 and before 1st September 1939, for such adjustments of capital and profits to be made as will secure a comparison of like with like. The words 'or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any modifications' were added by the Select Committee appointed to consider the Amendment Bill to make it clear that an appeal lies also against a refusal to make modifications.

The main object of this provision is to empower the Excess Profits Tax Officer to make such modifications and alterations as he may think just in the computation of profits and capital both as regards standard period and any chargeable accounting period in the cases covered by sub-secs. (2) to (6) and to confer a right of appeal to the Board of Referees.

The period of time for filing the appeal is one month from the date on which the order of the Excess Profits Tax Officer is communicated.

Appeals from orders under Sec. 8.—The provisions relating to appeals from orders passed under Sec. 8 are rather confusing. These are to be found in the following: (i) Sec. 17 of the Act, (ii) the proviso to sub-sec. (5) of Sec. 8, (iii) the proviso to sub-sec. (8) of Section 8, (iv) Rules 17 and 18 of the Excess Profits Tax Rules, and (v) Rules 3 to 7 of the Boards of Referees Rules.

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

(a) the interest, annuity, annual payment, royalty or rent were not payable ;

(b) any debt in respect of which any such interest is payable did not exist ; and

(c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

(1-A) Where—

(a) any debt is owing to any company by another company ; and

(b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company ; and

(c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist.

* This sub-section was inserted by the Excess Profits Tax (Amendment) Act, 1940.

(2) Where

(a) a company (hereinafter referred to as "the principal company") is resident in British India and is not a subsidiary of any other company resident in British India; and

(b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within British India (hereinafter referred to as "the subsidiary company") is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of Section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

(i) the chargeable accounting period, or

(ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or, as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company :

In this sub-section, the expressions "excess" and "deficiency" mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital" in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of Section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

Source of the Section.—Sub-sections (1) to (6) correspond to sub-sections (1) to (6) of Section 17 of the Finance (No. 2) Act of 1939. The last portion of sub-section (6) of the English Act says that the provisions of sub-sections (2) and (3) of Section 42 of, and Part I of the Fourth Schedule to, the Finance Act, 1938, shall have effect for the purposes of this sub-section as they have effect for the purposes of the said Section 42. Sub-sections (2) and (3) of Section 42 of the Finance Act of 1938 are accordingly enacted as sub-sections (7) and (8) of the Indian Act. Sub-sections (9) and (10) of the Indian Act are new and were introduced by the Indian Legislature. Sub-section (1-A) was added by the Excess Profits Tax (Amendment) Act of 1940.

Principle of taxation of Inter-connected Companies.—Viscount Simon, in introducing the Finance (No. 2) Bill of 1939 stated the principle underlying the taxation of inter-connected companies in these words: "In this excess profits tax it is proposed to treat the group of parent and

subsidiaries as one unit for purposes of tax. In substance, the group is one business unit and the way in which the profits may be distributed among the family is a matter of internal interest and is of no interest to the State so long as it gets the whole unit treated as one. It is reasonable to measure any excess profits by treating the whole group as one unit."

Again he said: "The main principle of the sub-section is that the profits and losses of the parent company and its subsidiaries should be aggregated for the purposes of excess profits tax". See *House of Commons Debates*.

Scope of the Section.—Sub-section (1) deals with allowance of interest, annuity, royalty or rent paid by one company to a connected company. Sub-sections (2), (3) and (4) are the substantive provisions relating to such companies; sub-section (5) provides for alteration of the chargeable accounting period of a subsidiary company as may be necessary; sub-section (6) prescribes ownership of 90% of the ordinary share capital as the test; sub-section (7) provides that ordinary share capital of a company owned by another company shall be computed as laid down in Schedule III; sub-section (8) defines 'ownership' and 'ordinary share capital'; sub-section (9) provides for allocation of excess profits tax amongst the companies; and sub-section (10) provides for allowance of excess profits tax in computing the income of the subsidiary company for purposes of income-tax.

Definition of subsidiary company.—Sub-section (6) defines the meaning of 'a subsidiary company' for the purposes of this section. A company is a subsidiary company of another if not less than nine-tenths of its ordinary share capital is owned by that other company. Ownership includes beneficial ownership and the shares may be owned either directly or through another company or companies or partly directly and partly through another company or companies. Ordinary share capital in this connection means all the issued share capital of the company other than capital the holders whereof have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company. The ordinary share capital has to be computed as specified in Schedule III. A 'company' is defined in Section 2 (8). A foreign company may be a subsidiary company within the meaning of the Act.

Sub-section (1).—This deals with interest, annuity, royalty or rent paid by one company, to another inter-connected company. The practical effect of this sub-section is that the interest etc., will not be deductible in computing the profits of the company paying nor included in the receipts of the company receiving. The payments of the debts will be ignored. Under paragraph (c) if company A pays rent to company B, both A and B being subsidiaries of C, then the payment of rent will be ignored but the property in respect of which the rent is paid will be deemed to be the property of A.

Sub-section (1-A).—Resident subsidiary of non-resident principal company.—This sub-section was added by the Excess Profits Tax

(Amendment) Act of 1940 and it is stated in the statement of objects and reasons that it provides for the case of a resident company which is the subsidiary of a non-resident company which is financed by the latter. The amendment secures that allowance is given for the whole of the capital of the group that actually earns the Indian profits. The scope of the sub-section is however much wider.

Sub-section (2): Companies to which sub-sections (3) & (4) apply.—The conditions under which the substantive provisions laid down in sub-sections (3) and (4) apply are laid down in this sub-section. These provisions apply where during the whole or part of a chargeable accounting period of a principal company another company is its subsidiary company. The principal company may be a subsidiary of a non-resident company but the term does not include a subsidiary of a resident company. The subsidiary company for the purposes of these rules may be a resident or a non-resident company. The rules do not apply where the principal company is a non-resident and the subsidiary a resident company but if the latter has another subsidiary company resident or non-resident, the first subsidiary company will be a principal company and the rules will apply to the two subsidiary companies. Non-resident companies which are not subsidiaries of resident companies do not come within the rules.

Foreign subsidiaries.—There was a proposal before the House of Commons to delete the words 'whether or not' from clause (b) and thus exclude foreign subsidiary companies. For the discussion of this topic and Viscount Simon's reply thereto see *House of Commons Debates*. The words 'subject to the provisions of Section 5', effect the exclusion of the profits of a subsidiary company which operates outside British India and is not liable to income-tax. The sub-section does not in any way enlarge the liability imposed by Section 5.

Sub-sections (3) and (4).—These sub-sections lay down the principle of treating the group of companies as one unit.

Sub-sections (5), (6), (7) and (8).—These do not require any comment.

Sub-section (9): Allocation of tax between the companies.—This sub-section does not appear in the English Act. It was inserted by the Indian Legislative Assembly. The intention underlying this sub-section is that the profits for the purposes of excess profits tax of all the companies, principal as well as subsidiary, must be consolidated and the tax collected on the total amount arising as profits from all this group of companies. This empowers the principal company, if the money is paid by it, to get their share of excess profits tax paid by it from the subsidiary company or companies: *vide Legislative Assembly Debates*.

Sub-section (10): Deduction of excess profits tax for income-tax purposes.—This sub-section is also new and its object is to enable the excess profits tax payable by the principal company in respect of the profits of any subsidiary company to be deemed to have been paid by the subsidiary company for the purposes of Section 12 which deals

with the allowance of excess profits tax in computing income for income-tax purposes.

*10. (1) In computing profits for the purposes of this Act
Artificial trans- actions. no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.

* 10-A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941, was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.
Transactions designed to avoid or reduce liability to excess profits tax.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

(a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent;

(b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal.

* Sec. 10 was recast and Sec. 10A was added by the E.P.T. (Second Amendment) Act, 1941.

Source of Sections 10 and 10A.—Sections 10 and 10-A were inserted by the E.P.T. (Second Amendment) Act (XXIV of 1941). Finance (No. 2) Act of 1915 contained provisions nullifying artificial transactions to avoid excess profits tax in Section 44 (3) and in Rule 5 of Part I of the Fourth Schedule to the said Act. Section 44 (3) provided, that a person shall not for the purpose of avoiding the payment of excess profits duty enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and that if any person acted in contravention of this provision he would be liable on summary conviction to a fine not exceeding £ 100; and Rule 5 provided that “no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act”. The Finance (No. 2) Act of 1939, Seventh Schedule, Part I, Rule 9, contains a similar provision. This rule is elaborated and embodied in the Indian Act in these sections of the Act. The English Act of 1939 does not contain the provision for levying a penalty.

Section 10 before its amendment in 1941 dealt only with fictitious or artificial transactions. The present Sections 10 and 10-A are wider and cover *any* transaction which has for its main purpose the avoidance of excess profits tax.

Section 10 (1): Artificial transactions.—Even if there is no *intention* to evade tax, if the transaction has that effect, it would be within Section 10; every device of whatever nature having the effect of evasion of tax falls within the section. Section 10 covers not only sham transactions but genuine transactions provided they are artificial. The transactions and operations falling within Sections 10 and 10-A are ineffectual only for the purposes of computing the excess profits tax payable under the Act. They will not be illegal or void for other purposes merely because they contravene these sections. Their validity for other purposes will depend on whether they contravene other laws.

Sub-section (2): Penalty.—A penalty not exceeding the tax evaded is leviable under Section 10 (2). The imposition of a penalty precludes a prosecution for an offence under the Penal Code or this Act in respect of the same facts: *vide* Section 25 (2). The English Act does not contain a provision for levying a penalty.

Decisions.—An instance in which a transaction was held to be artificial within Rule 5 of Part I of Schedule IV of the Act of 1915 is to be found in *Young & Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 827). The facts of this case and the decision are considered *supra* at pp. 66-67. In this case the transaction was found to be honest and above board, but still ‘artificial’ within the meaning of the Act. In *Scottish Adhesives Co. Ltd. v. Commissioners of Inland Revenue* (1 A.T.C. 42) an arrangement for payment of remuneration to directors was held to be artificial. In *Maxse’s Case* (12 Tax Cas. 41) however, Scrutton, L. J., said that the fixing of a *reasonable* remuneration for work done cannot be an artificial operation. The question in such cases is whether the remuneration paid is reasonable.

11. (1) The Central Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in any Indian State, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in that State or in that part and in British India :

Relief in respect
of double excess
profits taxation.

Provided that where under Section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(2) If any person, who has paid excess profits tax under this Act, for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum equal to one half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

Sub-section (1) — Where there is provision for corresponding relief in U. K., Indian State or Dominion.—The conditions of granting of relief under this sub-section are (i) that excess profits tax must have been paid both in British India and in the United Kingdom or an Indian State or in any other part of His Majesty's Dominions; (ii) the laws of the other country must provide for corresponding relief; (iii) the relief will be at such rate as the Central Government may fix by notification.

Double Taxation Relief Rules.—Rules have been framed under this provision for Double Taxation Relief with regard to (i) India and the United Kingdom; (ii) India and Aden; (iii) India and Ceylon; (iv) India & Cochin. See *infra*, *Rules and Notifications*.

Form No. E. P. 18 of the Excess Profits Tax Rules, 1940, contains the Form of Application for refund in respect of double excess profits taxation under the notification under Sec. 11 (i).

The U.K. Finance Act, 1940, Sec. 30, contains provisions for relief in respect of Dominion excess profits tax : See *infra*, *Statutes*.

National defence contribution.—Under sub section (2) of Sec. 19 of the Finance (No. 2) Act of 1939, if in the case of any chargeable accounting period the total national defence contribution is higher than the excess profits tax, the national defence contribution and not the excess profits tax is charged in respect of that period, and hence the necessity for the proviso to sub-sec. (1) of Section 11 of the Indian Act. Under the proviso relief can be granted only in respect of the amount of excess profits tax which would have been payable but for this provision.

Sub-section (2)—Where there is no provision for relief in the other country.—This corresponds to Section 49D of the Indian Income-tax Act. The conditions for relief under this sub-section are :

(i) profits arising outside India must have been charged to excess profits tax under this Act ;

(ii) the laws of that other country should not contain any provision for relief in respect of excess profits tax charged in British India ;

(iii) the assessee must have paid excess profits tax in that country also ;

(iv) the tax must have been paid in respect of the 'same profits' ;

(v) the relief is half the British Indian excess profits tax or half the excess profits tax payable in the foreign country, whichever is the less.

This sub-section is not applicable where the laws of the foreign country provide for relief. The exact meaning of the words 'same profits' is not very clear. It presumably refers to the 'profits arising in that country.' The section would apply where the assessee has paid tax on the Indian profits also in the foreign country. The sub-section applies also to Indian States and British Dominions if there are no provisions for relief there in respect of British Indian tax.

It may also be noted here that excess profits tax imposed by a country outside British India are deductible under Section 12 for purposes of income-tax to the extent to which such profits are liable to excess profits tax under this Act.

Procedure for getting relief.—The provisions of Sections 49E, 49F and 50, of the Income-tax Act relating to refund apply to excess profits tax. See Section 21 of the Excess Profits Tax Act and Rule 3 of the Excess Profits Tax Rules.

Where there is a provision for relief in a country other than the United Kingdom, Indian State, or part of His Majesty's Dominions.—This case is not dealt with either in sub-section (1) or sub-section (2) or anywhere else in the Act.

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of Section 11, shall, in computing for the purposes of

Allowances of excess profits tax in computing income for income-tax purposes.

income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period [to the extent to which such profits are liable to excess profits tax under this Act]* after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India:

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the [previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922)]* in which the deficiency of profits occurs.

English law.—The rule that excess profits duty which has been paid should be deducted in the computation of income for income-tax was first enacted in Section 35 of the Finance (No. 2) Act of 1915 and subsequently inserted in the Income-tax Act, 1918, Rule 4 of Schedule D, Rules applicable to Cases I and II. The main portion of this Rule ran as follows: "Where any person has paid excess profits duty the amount so paid shall be allowed as a deduction in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received payment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received." Section 22 of the Finance Act of 1922 however provided that no such deduction shall be allowed in respect of any interest paid on arrears

* These words were substituted by the Amendment Act of 1940.

of excess profits duty. There is also an exception in England with regard to excess profits duty imposed in respect of the sale of trading stock otherwise than in the ordinary course of trade: Proviso to Rule 4 (1) of Cases I & II of Schedule D. The provision has been re-enacted in the Finance (No. 2) Act of 1939, Section 18. The wording of the present section, except sub-section (2) which is new, follows Section 18 of that Act.

Changes made by the Amendment Act of 1940.—(i) In sub-section (2) the words “to the extent to which such profits are liable to excess profits tax under this Act” were substituted for the words “to the extent that such profits arose in the said country.” This amendment remedies the hardship that exists where a United Kingdom company pays in the United Kingdom 100% of the excess profits, the whole of the company’s profits being earned in India and receives no allowance for such excess profits tax in computing the profits for Indian income-tax purposes, because none of the profits actually arise in the United Kingdom. (ii) In the proviso, for the words ‘chargeable accounting period’ which occurred towards the end of the proviso, the words “previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922)” were substituted. This amendment ensures that excess profits tax paid in the United Kingdom in respect of a deficiency of profits in a chargeable accounting period is taken into account for Indian income-tax purposes whether such period is a chargeable accounting period in India or not.

Sub-section (1).—The words ‘diminished by any amount allowable by way of relief under the provisions of Section 11’ and ‘or super-tax’ do not appear in the corresponding provision of the English Act.

‘Payable’—The expression used in the English Finance Act of 1915 and the Income-tax Act of 1918 was ‘has been paid’ which means that the tax must have actually been paid before the deduction can be made. But as the calculation of the exact amount of excess profits duty was a matter of great difficulty and income-tax may have to be assessed before excess profits duty, a method of adjustment was provided in sub-rule (2) of Rule 4. The Finance (No. 2) Act of 1939 which the Indian Legislature has now followed has avoided this expression and used the term ‘payable’ to avoid such difficulties. The words ‘allowed by way of relief’ used with reference to relief were also changed by the Select Committee to ‘*is allowable* by way of relief’.

Super-tax.—The original Bill did not contain the words ‘or super-tax’. These words were added by the Select Committee to make it clear that even in the computation of income for purposes of super-tax excess profits tax payable should be deducted.

Proviso : Repayments.—The proviso follows the proviso to Section 18 (1) of the Finance (No. 2) Act of 1939 with amendments to suit sub-section (2) of the Indian Act which does not occur in the English Act. ‘Previous year’ was substituted for ‘chargeable accounting period’ at the end of the paragraph by the Amendment Act of 1940. The provi-

sions of the English Act of 1939 and the Indian Act of 1940 are framed on lines somewhat different from the Act of 1915. The words used in the recent Acts are 'amount repayable' not 'amount repaid' as in the Act of 1915.

Mere existence of a countervailing item would not amount to repayment: *Tarrant v. Roberts* (15 Tax Cas. 754). The present Act would cover such cases as the words used are 'amount repayable'. In that case it was held that a set off by agreement against amounts due from the taxpayer to the revenue constitutes repayment.

In England it has been held that income-tax has to be paid on repayments of excess profits duty in the year in which it is repaid even though the business is no longer being carried on: *Eglinton Silica Brick Co. Ltd. v. Marrian* (9 Tax Cas. 92; [1924] S.C. 946); *Kirke's Trustees v. Inland Revenue Commissioners* [1926] (11 Tax Cas. 323) (House of Lords).

It has been further held that repayment of excess profits duty must be regarded as an ascertained and assessable profit in the year of repayment: *Hill v. Mathews* (10 Tax Cas. 25), *A and W Nesbitt v. Mitchell* (11 Tax Cas. 211), *Olive and Partington Ltd. v. Rose* (14 Tax Cas. 701), *Rigden v. Commissioners of Inland Revenue* (19 Tax Cas. 542).

Subsidiary Companies.—There is a clear provision in the Indian Act that excess profits tax payable in the case of inter-connected companies by the principal company in respect of the profits of any subsidiary company shall for the purposes of Section 12 be deemed to have been paid by the subsidiary company and not by the principal company: *See* Sec. 9 (10). In the Finance (No. 2) Act of 1939 there is no such provision.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the proscribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of Section 6 or the amount of deficiency available for relief under Section 7.

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

Issue of notices for
assessment.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer, may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under Section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

Source of the Section.—This section corresponds to Sections 22 (2) and 22 (4) of the Indian Income-tax Act.

Sub section (1) : Notice for return.—A period of not less than 60 days from the date of service of the notice should be given. The time may be extended by the Excess Profits Tax Officer. Return should relate both to *profits of the business* of the chargeable accounting period and *the standard profits* or the *amount of deficiency* available for relief under Section 7. Form of notice is Form No. E. P. 1 appended to the Excess Profits Tax Rules: See Rule 7. Notes issued by the Government for guidance for filling up the form of return are printed in the Appendix. The Excess Profits Tax Officers should give all reasonable assistance to assessees in the preparation of returns, particularly in the selection of the most advantageous 'standard period'.—*Notes and Instructions*, para 1.

Sub-section (2) : Notice for production of accounts or documents.—The proviso to the sub-section makes it clear that the Excess Profits Tax Officer has no power to order production of accounts relating to a period prior to the previous year for the year ending on the 31st March 1937, that is, the financial year 1935-36.

Accounts of foreign business.—An assurance has been given on behalf of the Government by Mr. S. P. Chambers that instructions will be issued to all Excess Profits Tax Officers that foreign books should not be called for, if audited statements of accounts could be produced or if the assessment could be determined in any other way without calling for the books: See *Legislative Assembly Debates* and *Notes and Instructions*. If regular and properly audited accounts are furnished in respect of profits arising outside British India and there is no reason to believe that these accounts are incorrect the foreign books should not be called for and even in other cases books should not be called for if the amount of profits can be obtained in a more satisfactory way: *Notes and Instructions*, para 2.

14. (1) The Excess Profits Tax Officer shall, by an order
Assessments. in writing after considering such evidence, if
any, as he has required under Section 13, assess
to the best of his judgment the profits liable to excess profits tax
and the amount of excess profits tax payable on the basis of such
assessment, or if there is a deficiency of profits, the amount of
that deficiency and the amount of excess profits tax, if any, re-
payable and shall furnish a copy of such order to the person on
whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable
accounting period shall be payable by the person carrying on the
business in that period.

(3) Where two or more persons were carrying on the busi-
ness jointly in the chargeable accounting period, the assessment
shall be made upon them jointly and, in the case of a partnership,
may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assess-
ment could, but for his death, have been made on any person
either solely or jointly with any other person or persons, the
assessment may be made on his legal representative either
solely or jointly with that other person or persons, as the case
may be.

Sub-section (1): Assessment.—The assessing officer has to determine
(i) the profits liable to excess profits tax, (ii) the amount of excess pro-
fits tax payable, or (iii) if there is a deficiency of profits, the amount of
deficiency and the amount of tax, if any, repayable. The form of the
assessment order under Sec. 14 (1) is contained in Form No. E. P. 4
which contains also the form of demand.

Sub-section (2): By whom tax is payable.—The liability to pay tax in
respect of any chargeable accounting period is on the person carrying
on the business in that period. The liability of the person is mentioned
only in this section relating to procedure for recovery of the tax, as the
charge of excess profits tax is on the *business*. See p. 41 *supra*.

Sub-section (3): Assessment of firms and associations.—This sub-
section lays down generally that where two or more persons were
carrying on a business jointly in the chargeable accounting period, the
assessment shall be made upon them *jointly* and that in the case of a
partnership it may be made in the partnership name. The principle
of assessment is this. The Act taxes only business profits. The tax
is a tax on the business as a whole and not on the individuals who own
the business. Consequently, there is no provision such as there is in

the Income-tax Act for assessing the tax on the individual members of the firms. There is no difference in this respect between registered and unregistered firms. The hardship and confusion which this procedure may lead to, especially when applied with the provision contained in Sec. 5 (5) that all businesses to which the Act applies shall be treated as one business was pointed out during the course of the debates but the Government were of opinion that there would be no difficulty as the unit of assessment is a business: See *Legislative Assembly Debates*.

Sec. 44 of the Indian Income-tax Act which deals with the liability of partners in the case of discontinued firms applies to excess profits tax also. The section as applicable to excess profits tax runs as follows:

“Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Section 14 of the Excess Profits Tax Act, 1940, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment”.

Sub-section (4): Assessment of legal representatives.—This sub-section provides for the assessment of the legal representatives of deceased persons. There was some doubt under the Act of 1915 whether when a person dies excess profits duty in respect of profits earned during his life time could be levied on his executors. In *Cohen's Executors v Commissioners of Inland Revenue* [1924] (12 Tax Cas. 602; 131 L.T. 377) it was held that executors could not be assessed under the Act in respect of profits made in the lifetime of the deceased. But in *Executrices of Philip Weisberg v. Commissioners of Inland Revenue* [1933] (17 Tax Cas. 696) executrices were assessed. There is now a distinct provision in the Indian Excess Profits Tax Act, 1940, in Section 14 (4) that when an assessment could but for his death, have been made on any person, the assessment may be made on his legal representatives. Further, Section 21 of this Act provides that Section 24-B of the Indian Income-tax Act, 1922, shall apply to excess profits tax and Section 24-B clearly imposes liability on executors, administrators and other legal representatives to pay the tax payable by the deceased and authorises proceedings to be taken or continued against them.

Payment of tax in instalments.—The Select Committee considered that the tax payer should be allowed to pay his tax by instalments and were informed that instructions to this effect will be issued, as has already been done in connection with income tax and that such instructions will be published by the Central Board of Revenue. For the conditions under which instalment payments are allowed. See *Notes & Instructions*, para 13 which provides that the instalments should not exceed three in number and should commence not later than the date on which normally the whole of the tax would be payable and the interval between any two instalments and the next should not exceed two months. Time for payment may be given when an appeal is filed *bona fide* with regard to the tax in dispute.

*** 14A.** (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under Section 14, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of Section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiencies of profits have not been determined under sub-section (1) of Section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

* This section was inserted by the Excess Profits Tax Ordinance, 1948.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under Section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 per cent. per annum calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

Summary Assessment.—This section which was inserted by the Excess Profits Tax Ordinance, 1943, introduces a system of summary assessment. The idea is that as soon as an assessee's accounts are made up, the excess profits tax authorities will approach him on a common-sense basis, and on the basis of his own published accounts will endeavour to agree with him on the extent of excess profits, leaving out all controversy about disputed items. On the agreed amount so determined, a demand for excess profits tax will issue and the amount will be collected.

The summary assessment will be made by the Income-tax Officer to the best of his judgment, but in order to protect the assessee against an unduly high estimate, a safeguard has been provided. If, when the regular assessment is made, it is found that a refund is due to the assessee, the excess will be refunded, with interest thereon at 5 per cent. per annum, which may be regarded as a penal rate against the Government and therefore a guarantee to the assessee against the summary procedure being used to his disadvantage.

Compulsory Deposit.—The second feature of Ordinance of 1943 is a provision for compulsory deposit on the basis of the existing optional system, under which an assessee, if he so chooses, can, after he has been assessed to excess profits tax deposit a further sum not exceeding one-fifth of the excess profits tax and the Government will thereupon put aside for his benefit, a sum equal to one tenth of the tax. Under the provision the deposit of a sum at the maximum rate of one-fifth will be compulsory for all excess profits tax assesseees. The result is that 66½ per cent is levied as excess profits tax, and 13½ per cent as income-tax and super-tax. The State thus takes 80 per cent of the profits. The section immobilises as much as possible of the remaining 20 per cent

Under the section $13\frac{1}{2}$ of this 20 per cent will be compulsorily deposited with the Government, leaving to the assessee $6\frac{2}{3}$ per cent excess profits to be used for distribution of dividends or current consumption. Of the $93\frac{1}{2}$ per cent which will thus be taken by the Government 20 per cent will be held for the assessee's benefit, $13\frac{1}{2}$ representing his own money, which he will be able to withdraw within twelve months of the termination of hostilities or two years from the payment of the deposit, whichever is later. On that money, he gets two per cent interest. He is in addition entitled to $6\frac{2}{3}$ per cent which the Government is putting into the fund for his benefit. That will be released in accordance with rules, which have been framed in consultation with the Reconstruction Committee.

Finance Act, 1944.—By the Finance Act, 1944, the compulsory deposit has been increased from $1/5$ th to $19/64$ in the case of companies and to $17/64$ in the case of other persons.

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under Section 13, and may proceed to assess or reassess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Source of the Section.—This section is framed on the lines of Section 34 of the Indian Income tax Act, 1922.

Period of limitation.—The substantial difference is in the period of limitation for commencement of proceedings for reassessment. Under this section it is 5 years from the end of the chargeable accounting period in question. Under the Income-tax Act it is 4 years in ordinary cases and 8 years in the case of deliberate furnishing of inaccurate particulars.

Interpretation of the Section.—For notes on the interpretation of this section see Notes to Section 34 of the Income-tax Act in A. N. AIYAR's *Commentary on the Income-tax Act*. Section 34 of the Income-tax Act was considered by the Privy Council in *Mahaliram Ramjidas' Case* [1940] (8 I.T.R. 442). and the Board has authoritatively laid down that to enable the Income-tax Officer to initiate proceedings under Section 34 it is enough that the Income-tax Officer, on the information which he has before him and in good faith

considers that he has good ground for believing that the assessee's profits have for some reason escaped assessment or have been assessed at too low a rate. The Income-tax Officer is not required by the section to convene the assessee or to intimate to him the nature of the alleged escapement or to give him an opportunity of being heard before he decides to operate the powers conferred by the section.

Re-opening of assessments.—In some of the decisions on excess profits duty in the United Kingdom, the right of the revenue to re-open assessments to accord to subsequent adjustments in accounts or subsequent facts has been considered. Where a company included a sum of £33,847 as an ascertained liability in its accounts for the year 1919-20 but after negotiations the claim against the company was finally given up, the Crown was held to be entitled to re-open the assessment of the year 1919-20 and make a fresh assessment disallowing the deduction: *H. Ford & Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 997). See also the cases of *Newcastle Breweries Ltd.* (12 Tax Cas. 927), *Isaac Holden's Case* (12 Tax Cas. 768) and *Bernhard v. Gahan* (13 Tax Cas. 723). The facts of these cases and the decisions therein are considered at length at pp. 63 to 67 *supra*. See also *Thomas Hinshelwood & Co., Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 417) cited under Section 20 *infra*.

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the

Penalties.

course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of Section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

(a) where the person has failed to furnish the return required under sub-section (1) of Section 13, the amount of the excess profits tax payable; and

(b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

When penalty can be levied.—Under this Section a penalty can be levied for

(i) failure without reasonable cause to furnish return under Section 13 (1);

(ii) failure without reasonable cause to produce accounts or documents or other evidence required under Section 13 (2);

(iii) concealment of particulars of profits or capital employed;

(iv) deliberately furnishing inaccurate particulars of profits or capital employed.

Quantum of penalty.—In case (i) the maximum penalty leviable is the amount of the excess profits tax payable and in cases (ii), (iii) and (iv), the amount of excess profits tax which would have been avoided if the return had been accepted as correct. This is, of course, in addition to the excess profits tax payable.

Procedure.—The offence may be discovered in the course of any proceedings under the Act. The Excess profits Tax Officers cannot levy penalty without the sanction of the Inspecting Assistant Commissioner.

Penalty for fictitious transaction.—Section 10 of the Act imposes a penalty for entering into fictitious or artificial transactions or operations. Here also the quantum of penalty is the tax evaded or sought to be evaded.

Criminal prosecution.—Sections 23 to 25 deal with prosecutions before a Magistrate for offences under this Act and under the Penal Code. For non-compliance with a requisition under Section 13 a fine up to Rs. 500 and a further fine of Rs. 50 per day may be levied. Making false statements in a return required under Section 13 is punishable with simple imprisonment up to six months or with fine up to Rs. 1,000 or with both. No prosecution can be launched except at the instance of the Inspecting Assistant Commissioner. The offences may be compounded.

Imposition of penalty bars prosecution.—No prosecution can be initiated under Secs. 23 and 24 or under the Indian Penal Code in respect of the same facts as those in respect of which a penalty has been imposed under the Act: see Sec. 25 (2). The Bill as amended by the Select Committee contained a sub-section, sub-section (2) to Sec. 16, to the effect that "no prosecution for an offence *against this Act* shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under *this section*." In the Council of State this provision was made wider so as to cover prosecutions *under the Penal Code* and all cases where a penalty has been imposed under this Act, and was transferred to Sec. 25 as sub-section (2) of that section.

Appeals from orders imposing penalty—Orders imposing penalty made by the Excess Profits Tax Officer are appealable to the Appellate Assistant Commissioner: See Sec. 17. The Form of Appeal is Form No. E. P. 11 appended to the Excess Profits Tax Rules. The amount of penalty may also be enhanced in an appeal: See Sec. 17 (4). An appeal lies also from imposition or enhancement of penalty on appeal: See Sec. 18.

17. (1) Any person aggrieved by a decision made in pursuance of Section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner :

Appeals.

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the second proviso to Rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule :

Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of Section 8, against any [refusal to make modifications or against any modifications]† made by the Excess Profits Tax Officer under sub-section (8) of Section 8, against any decision of the Excess Profits Tax Officer under Rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

† The words within brackets were substituted for the word 'modification' by the Amendment Act of 1941.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

Orders appealable to Assistant Commissioner—The orders made by the Excess Profits Tax Officer are appealable under this section to the Appellate Assistant Commissioner where the appellant objects to :—

- (i) a decision made in pursuance of Section 8 (successions and amalgamations);
- (ii) the amount of excess profits tax assessed;
- (iii) his liability to be assessed under the Act;
- (iv) a penalty imposed by the E.P.T. Officer;
- (v) the amount of deficiency of profits as assessed by the E.P.T. Officer;
- (vi) amount allowed by way of relief under any provision of the Act;
- (vii) refusal to grant relief.

Orders not appealable to the Assistant Commissioner are—

(i) determination of the amount of the profits of the standard period where those profits have been determined in accordance with the second proviso to Rule 1 of the First Schedule, (*i.e.*, where profits for a standard period determined under the Indian Income-tax Act are taken as profits of that period for excess profits tax) except to the extent of adjustments made under the Schedule;

(ii) apportionment made under the proviso to Section 8 (5);

(iii) refusal to make or making of modifications under Section 8 (8);

(iv) decisions under Rule 11 of Sched. I (*i.e.*, apportionment of deductions claimed which are not reasonably attributable to a particular period);

(v) any decision of the Board of Referees or of the Central Board of Revenue.

Orders mentioned in (ii), (in) and (iv) are appealable to the Board of Referees.

Second Proviso.—This proviso was entirely re-drafted by the Excess Profits Tax (Amendment) Act of 1940, consequent on the insertion of sub-sec. (8) to Section 8 and the changes made in the first Schedule to the Act.

Sub-section (2) : Period of limitation.—The period of limitation for filing an appeal is 45 days. The starting point of time is

(i) the receipt of the notice of demand relating to the assessment or penalty objected to;

(ii) in the case of deficiency of profits—the receipt of the copy of the order determining the deficiency;

(iii) in the case of relief—the receipt of intimation of the order granting or refusing relief.

Power to extend time.—The Appellate Assistant Commissioner may admit an appeal after the prescribed time if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period. This provision corresponds to the last portion of sub-section (2) of Sec. 30 of the Indian Income-tax Act, which in its turn is based on Sec. 5 of the Indian Limitation Act. The meaning of the expression 'sufficient cause' has been considered in several cases under the Indian Limitation Act and the principles laid down in those cases will be helpful in construing this section.

Sub-section (3) : Form and verification.—The Form and manner of verification of appeals are prescribed in the Excess Profits Tax Rules. Rule 12 provides as follows:—

"An appeal under Section 17 of the Act shall be—

(a) in Form E. P. 9, if against a decision of the Excess Profits Tax Officer under Section 8 of the Act;

(b) in Form E. P. 10, if against the amount of an assessment made or a deficiency of profits under sub-section (1) of Section 14 of the Act;

(c) in Form E.P. 11, if against an order imposing a penalty under Section 10 or Section 16 of the Act or under sub-section (1) of applied Section 46;

(d) in Form E.P. 12, if in respect of an alleged insufficient relief or refund, or a refusal to grant relief or refund, by the Excess Profits Tax Officer."

Sub-section (4) : Power to enhance assessment or penalty.—The Appellate Assistant Commissioner may enhance the assessment or penalty in appeal, after giving reasonable opportunity to the aggrieved party to show cause. An order enhancing penalty or assessment in appeal was appealable to the Commissioner under Section 18 until the Appellate Tribunal was established and is now appealable to the Tribunal.

Sub-section (5) : Procedure.—Rules relating to the procedure have been made by the Central Board of Revenue in this behalf and are contained in Rule 19 of the Excess Profits Tax Rules. The Commissioner has the right to be represented at the hearing of the appeal.

18. (I) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under Section 16 or enhancing his assessment or enhancing a penalty under Section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessments or penalties.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this Section shall cease to have effect.

Appeals to Commissioner.—This section was added by the Select Committee to provide on the lines of Section 32 of the Income Tax Act, 1922, for appeals to the Commissioner against certain orders made by the Appellate Assistant Commissioner until the provision for an appeal to the Appellate Tribunal contained in Section 19 came into operation. Part II of the Amendment Act of 1939 came into operation on the 25th January 1941 and this section has ceased to have effect.

19. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit :

Power of revision.

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under Section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under Section 16 or Section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal

constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

Commissioner's powers of Revision.—Sub-section (1) of this section vested the Commissioner with powers of revision similar to those conferred on him by Sec. 33 of the Income-tax Act and ceased to have effect on the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, that is, when the Appellate Tribunal was established.

Sub-section (2) : Appeals to Appellate Tribunal.—After the coming into force of Part II of the Income-tax (Amendment) Act, 1939, Section 13 has ceased to have effect and appeals now lie to the Appellate Tribunal by the Excess Profits Tax Officer or a person against whose business an order under Section 16 or Section 17 has been made.

Powers of the Appellate Tribunal.—The Appellate Tribunal has all such powers in disposing of appeals as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Rectification of mistakes.

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

Rectification of mistakes.—This section corresponds to Section 53 of the Indian Income-tax Act. But there are some substantial differences : (i) The power under the Excess Profits Tax Act is vested in the Commissioner alone ; (ii) the power extends to mistakes in any evidence recorded during assessment or appellate proceedings. This last power was added by the Select Committee who considered the Bill. As to rectification of mistakes generally see notes to Section 35 in A. N. AIYAR'S *Commentary on the Indian Income-tax Act*.

Enhancement of liability.—Where rectification has the effect of enhancing the liability of any person a reasonable opportunity must be given to him of being heard.

Period of limitation—The period of limitation is 4 years from the date of the order sought to be rectified as in the Indian Income-tax Act.

General power to rectify mistakes.—The power to rectify mistakes was held to exist even under the Act of 1915 in *Thomas Hinshelwood & Co. Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 417). In this case excess profits duty authorities failed to apply their mind to the returns and wrongly allowed a deduction in respect of directors' remuneration of a sum higher than that of the last pre-war trade year and, on discovering the mistake, levied an additional assessment, and it was contended that they had no power to do so, as the payments had been disclosed to them and had once been allowed. It was held that the authorities were entitled to reopen the assessment and make an additional assessment. The Lord Justice Clerk (Scott Dickson) observed: 'I think it is hopeless to contend that the payers of excess profits duty are to get off because of this mistake which was made. It seems to me quite an innocent mistake, and quite an easily understood mistake, because with all these returns coming in one part of the establishment might fail to collate the returns which were sent to another part of the establishment'. The learned Judge further said that the result of not allowing an additional assessment in such cases would be "not only grossly inequitable with regard to the revenue and other tax payers, but also clearly contrary to the letter of the statute". Lords Dundas, Lord Salvesen and Lord Ormrod agreed.

21. The provisions of Sections 4A, 4B, 10, 13, 24B, 29, 36, to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with such modifications, if any, as may be prescribed, as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of Section 3 as he exercises in relation to income-tax under the said Act:

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

Application of Income-tax provisions.—Certain sections of the Income-tax Act are made applicable by this section to the excess profits tax with necessary modifications. The modifications are stated in Rule 3 of the Excess Profits Tax Rules, and the sections so modified are printed *infra*.

The sections made applicable relate to the following matters :—

- Sec. 4A. Residence in British India.
- 4B. Ordinary Residence.
- 10. Assessment of Business.*
- 13. Method of accounting.
- 24B. Liability of legal representatives of deceased persons.*
- 29. Notice of demand.
- 36. Omission of fractions of annas.
- 37. Power to take evidence on oath.
- 38. Power to call for information.
- 39. Power to inspect the register of members of Companies.
- 40. Guardian, Trustees and Agents.*
- 41. Court of Wards.*
- 42. Non-residents.
- 43. Agents of non-residents.
- 44. Liability in case of discontinued firm.*
- 44A to 44C. Special provisions as to shipping.*
- 45 to 47. Recovery of tax, penalties.*
- 48, 49E, } Refunds.*
- 49F & 50. }
- 54. Disclosure of information.*
- 61. Appearance by authorised representatives.
- 62. Receipts.
- 63. Service of notices.
- 65. Indemnity.
- 66, 66A. Reference.
- 67. Bar of suits in Civil Courts.
- 67A. Computation of periods of limitation.

The sections marked with asterisks are applicable with modifications.

The following modifications in the sections of the Income-tax Act which are applicable to Excess Profits Tax require special notice :

Section 10 : Business.—The modifications in Section 10 which relates to assessment of business are :

(i) *Depreciation.*—Applied Section 10 of the Income-tax Act does not contain clauses (b) and (c) of the proviso to clause (vi) of sub-section (2). Consequently, for excess profits tax purposes the right to carry forward unabsorbed depreciation has been disallowed. The limitation contained in clause (3) that the aggregate of all the allowances shall in no case exceed the original cost to the assessee became superfluous and was therefore omitted.

(ii) *Insurance business.*—Sub-section (7) of Section 10 has also been modified as a result of the granting of the exemption to life insurance business from excess profits tax. The profits of other insurance business will be computed in accordance with the Rules contained in the schedule to the Indian Income-tax Act, in so far as they are applicable to such businesses.

Section 40.—Applied Section 40 provides for the assessment of agent of non-residents and lays down that where he is entitled to receive on behalf of the non-resident principal any profits chargeable under the Act, tax shall be levied upon and recoverable from such agent. Reference to guardians and trustees has been omitted.

Section 41.—Applied Section 41 does not contain the provisos to Section 41 (1) of the Income-tax Act. As excess profits tax is levied at a flat rate the provision in the 1st proviso for levying tax at the maximum rate became superfluous and has been omitted. But it is not clear why the second proviso which deals with cases where part only of the trust income is chargeable has been omitted.

Section 44.—(Liability in case of discontinued firm or association of persons). The Section has been completely redrafted. The words "or where an association of persons is dissolved" which occur in Section 44 of the Income-tax Act do not occur here.

Section 46.—Sub-section (5) of Section 46 which deals with the recovery of arrears of income-tax from salaries, has been omitted.

Section 48.—(Refunds). Sub section (1) of Section 48 of the Income-tax Act has been completely redrafted. Sub-section (3) which deals with case of refund where one person's income has been included in the income of another has been omitted.

Section 50.—(Limitation of claims for refund). This section has been completely redrafted. The period is 4 years.

Section 61.—(Appearance by authorised representatives). The application of Section 61 to the Excess Profits Tax Act with the modifications stated created some difficulties with regard to income-tax practitioners. Rule 3 (1) provided that all references to 'income-tax' and 'Income Tax Officer' shall be construed as references to 'excess profits tax' and 'Excess Profits Tax Officer'. Under Sec. 61 (2) (iv) (a) 'Income-tax practitioner' includes any person who before the 1st day of April 1938 attended before an *income tax* authority on behalf of any assessee otherwise than in the capacity of an employee or relative. If 'excess profits tax' is substituted for 'income-tax' here, those income-tax practitioners who come under this clause cannot be excess profits tax practitioners as there was no excess profits tax authority before 1st April 1938. A similar complication arose with regard to the substitution of 'excess profits tax' in the expression 'income tax proceeding' in sub-sec. (3) of Sec. 61. These difficulties were pointed out in the First Edition of this work and have since been remedied by amendment of Rule 3.

22. (1) Notwithstanding any thing contained in the Indian

Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be

Income-tax papers
to be available for
the purposes of this
Act.

used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

Availability of income tax papers for excess profits tax and vice versa.—This section overrides the provisions of Sec. 54 of the Indian Income-tax Act to the extent specified in the section. It may be noted that this section applies only to *statements or returns* made or furnished under the Act, or obtained or collected for the purposes of the Act, while the confidential nature under Sec. 54 attaches also to *accounts or documents* produced under the Act, and to *evidence given or affidavit or deposition* made in the course of any proceedings under the Act.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under Section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

24. If a person makes in any return required under Section 13 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

25. (1) A person shall not be proceeded against for an offence under Section 23 or Section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence punishable under Section 23 or Section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under Section 23 or Section 24.

Bar of prosecution.—Sub-sec. (2) enacts a general provision that no prosecution for an offence punishable under Sec. 23 or Sec. 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under the Act. Originally this sub-section stood as sub-sec. (2) of Clause 16 of the Bill as amended by the Select Committee and was applicable only to penalties imposed under Sec. 16 and did not prevent prosecutions under the Penal Code. The sub-section was removed to this section and made a general one applicable to all cases where penalty was levied, and prosecutions under the Indian Penal Code were also barred. See *Legislative Assembly Debates*.

This section may be compared with Sec. 28 (4) and Secs. 52 and 53 of the Income-tax Act. Prosecutions under the Income-tax Act alone are barred by Sec. 28 (4).

Compounding of offences.—Offences punishable under Secs. 23 and 24 may be compounded either before or after the proceedings by the Inspecting Assistant Commissioner. There is a corresponding provision in Sec. 52 of the Indian Income-tax Act.

Compounding of assessment proceedings.—Whether tax can be settled between the tax payer and the Crown without the formality of an assessment is considered at length by the Court of Appeal in *Cockerline & Co. v. Commissioners of Inland Revenue* (16 Tax Cas. 1) in which a settlement was upheld by the Court.

26. (1) If on an application made to it through the Excess Profits Tax Officer the Central Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of Section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just :

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of Section 6 is inadequate.

Power of Central Board of Revenue to grant relief in special cases.

* [Provided further that a determination on an application under this sub-section--

(a) shall have effect with respect to all subsequent 'chargeable accounting periods;

(b) shall exclude any further application under this sub-section.]

(2) Without prejudice to the generality of the provisions of sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely :—

(a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of Section 6 would be inequitable, taking into account the normal profits made in similar businesses;

(b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax;

(c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.

(3) If on an application made to it through the Excess Profits Tax Officer the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely :—

* This proviso was added by the Amendment Act of 1940.

(a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or

(b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or

(c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India; or

† (d) in the case of any business which includes the winning of any mineral (including mineral oil), the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased war time output the source of the mineral might have been expected to be exhausted;

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just:

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

* (4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of Section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of Section 6, the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees

† This clause was added by the (Second Amendment) Act of 1941.

* Sub-section (4) was added by the Amendment Act of 1940.

disposing of the application under sub-section (3) of Section 6 is communicated to the person who has made that application.

Powers of the Central Board of Revenue to grant relief in special cases.—This section deals with the power of the Central Board of Revenue to grant relief in respect of (i) computation of standard profits and (ii) computation of profits of chargeable period where the ordinary method of computation would be inequitable. Sub-secs. (1) and (2) refer to standard profits, sub sec. (3) refers to profits of chargeable period. Sub-sec. (4) which was added by the Amendment Act of 1940 prescribes the time limit for making applications under sub-sec. (1) and sub-sec. (3).

Sub section (1): Relief as to standard profits.—For the exercise of the power under this sub-section two conditions are necessary, *viz.*, (i) that special circumstances must exist which render computation under Sec. 6 (1) inequitable, (ii) no relief or insufficient relief must have been granted by the Board of Referees under Sec. 6 (3). In such a case the Central Board of Revenue may direct that the standard profits shall be computed to be such greater amount as it thinks just. It is stated by the Select Committee on the Amendment Bill that an application under Section 26 (1) is competent whether or not an application under Section 6 (3) has been made to the Board of Referees. The newly added sub-section (4) also contemplates that an application to the Central Board would lie even if no application under Section 6 (3) has been made.

Maximum amount—Such amount should not however exceed the statutory percentage of the average amount of the capital employed in the business unless (i) there is some specific cause peculiar to the business, and (ii) the relief afforded under Section 6 (3), if any, is inadequate.

Statutory percentage.—This is defined in Sec 2 (21), p. 31 *supra*.

Specific cause peculiar to the business—As to the meaning of 'specific cause peculiar to the business' and the case law thereon see pp. 93 to 96 *supra*.

Procedure.—The application has to be made to the Board through the Excess Profits Tax Officer. This was made clear by the Excess Profits Tax (Amendment) Act of 1940. The time limit is prescribed by sub-sec. (4). For Form of application see Form E. P. 15, E.P.T. Rules, printed *infra*.

Bar to further applications.—The last proviso to sub-section (1) was added by the Excess Profits Tax (Amendment) Act, 1940. Its object is obvious. A similar proviso was added to Section 6 (3) also.

Sub section (2): Special grounds for affording relief.—The powers of the Central Board of Revenue under sub-section (1) are very wide and of a general nature. The following are however special circumstances for giving relief.

(a) **Abnormally low capital compared with activities.**—The object of this provision and the reason for adopting 1st July 1938 appear in the following statement made by Mr. S. P. Chambers in the Legislative Assembly :

“ This sub-clause gives power to the Central Board of Revenue to give relief in certain special circumstances. The object of putting in a date there was to give relief to those new businesses run more by partnership and individuals than by a company—where the business having been started quite recently, the amount of capital employed owing to the nature of the business is very small, and, therefore, a percentage on capital might be a quite ridiculous standard profit. Let me take the example of a broker in a jute exchange or produce exchange or something of that kind. In this case, the amount of capital is small in relation to the total volume of the business; and having started after a date when they have any access to a standard period, they have to take a percentage on capital which would be quite unfair. In putting in the date 1st December, 1938, what was in mind was that there was a period of at least nine months between that date and the 1st September, 1939, and it was thought at that time that there would be in those cases an available standard period. But it has since been pointed out that the last standard period available must under clause 6, as it now stands, end not later than the 31st March, 1939, and not on the 1st September, 1939. For this reason, the date the 1st day of December, 1938, should, therefore, go back, at least as far back as July, 1938, so that there is at least nine months of available standard period. To go back beyond that would be giving extra relief in cases where, although special circumstances were present, there are available standard periods, and, therefore, the ordinary process of appeal against the profits of standard period would be more appropriate.”

(b) **Heavy preliminary or experimental expenses.**—Where such expenses are incurred in the accounting periods closely preceding the chargeable accounting period and would normally fall to be written off in the chargeable accounting period this is a special circumstance for granting relief.

(c) **Business of a pioneer nature.**—This clause was added by the Legislative Assembly and is intended to afford relief to nascent industries. The importance of affording relief to such industries was emphasised before the Assembly. The businesses coming under this clause are specified clearly in the clause. They must be concerned with an industrial process or a form of manufacture or production *not undertaken in British India before 1st April, 1932*, and must not have been in existence long enough to pay income-tax for the assessment year 1937-38.

(d) **Minerals and mineral oils.**—This clause was added by the Second Amendment Act of 1941. As the increased output owing to war requirements would bring about an earlier exhaustion of the source of such minerals an increase in the standard profit is inappropriate to the varying circumstances of chargeable accounting periods and it is

provided therefore that allowance may be made for this premature exhaustion in arriving at the profits of any chargeable accounting period.

Sub-section (3) : Power to grant relief as to computation of profits of chargeable period.—This section needs no comment. For Form of application see Form E. P. 16.

Sub-section (4) : This sub-section was added by the Amendment Act of 1940 and rectifies the omission in the Act to provide for the manner in which and the time in which an application is to be made to the Central Board of Revenue under sub-secs. (1) and (3).

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules, ^{Power to make rules.} rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) proscribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds ;

(b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made applicable to excess profits tax by Section 21 ; or of any rules made under any such provision ;

(c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in British India ;

(d) provide for any matter which by, or under, this Act is to be proscribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under Section 59 of the Indian Income-tax Act, 1922.

Excess Profits Tax Rules, 1940.—For the Rules made under this Section see the Excess Profits Tax Rules, 1940, printed *infra*

SCHEDULE I.

[See Section 2 (19).]

Rules for the Computation of Profits for Purposes of Excess Profits Tax.

Lord Sumner on the Construction of the Schedules.—In *Inland Revenue Commissioners v. Port of London Authority* ([1923] A.C. 507 at 521) Lord Sumner has made the following general observations on the construction of the Fourth Schedule to the Finance (No. 2) Act of 1915 which contained the rules for computation of profits, prewar standard and capital for the purposes of excess profits duty :

“The Fourth Schedule to the Finance (No. 2) Act, 1915, is framed for the purpose of providing practical rules, precise and peremptory, for computing the prewar capital of chargeable undertakings. It is, in substance, a series of directions, not necessarily exhaustive, for preparing a balance sheet of assets and liabilities. It is strictly a business document, and as by means of it, the Inland Revenue obtains the computations under which it takes tax, the Schedule must be read strictly and not so as to give the Crown anything more than it clearly says. It contemplates an assets side and a liabilities side and the balance struck gives a capital, arbitrarily ascertained it may be, but at any rate arrived at readily in a time of emergency and pressure”.

History of the Schedule.—This Schedule corresponds to Part I of the Seventh Schedule to the Finance (No. 2) Act of 1939. The material alterations are these : (i) Rules 2 and 3, sub-rule (3) of Rule 4, Rule 5, Rule 7 (2) (b), Rule 8, Proviso to Rule 9 and Rule 10 were added by the Select Committee. The object of these additions will be considered under the respective Rules. (ii) In the Legislative Assembly the following modifications were made. In Rule 1, first para, the words ‘or would be so computed if income-tax were chargeable on those profits’ were deleted. In Rule 8 these words were added : “except where such remuneration” is subjected to excess profits tax in the hands of the managing agents.”

The Excess Profits Tax Amendment Act of 1940 made the following changes. In Rule 1 a new proviso was added as the first proviso. In Rule 4 after sub-rule (2) a new sub-rule was added as (2-A). In Rule 7 a new sub-rule was substituted for sub-rule (1) and sub-rule (3) was added. Rule 11 was also added.

The Excess Profits Tax (Second Amendment) Act of 1941 inserted Rule 5-A.

The Scope of the Schedule.—This Schedule contains rules for the computation of profits for purposes of excess profits tax. Under Section 2 (19) of the Act ‘profits’ have to be computed in accordance with this Schedule and under Section 2 (16) losses have to be computed in the same manner as for the purposes of the Act profits are to be computed. These Rules apply to the computation of profits both of the

standard periods and of the chargeable accounting periods. The rules relate briefly to the following matters :—

Rule 1 lays down the general rule that profits shall be computed on income-tax principles and provides for apportionment where accounting periods are not co-terminous with standard period or chargeable period.

Rule 2 lays down that profits of the standard period shall be computed as if the *Income-tax (Amendment) Act, 1939*, were in force at that period.

Rule 3 prohibits carry forward of *unabsorbed depreciation and losses*.

Rule 4 deals with income from *investments*.

Rule 5 deals with interest on *loans from banks and debentures* borrowed for increasing capital.

Rule 5-A was added in 1941 to treat *all borrowed money* as capital.

Rule 6 disallows deduction of *income-tax, super-tax or excess profits tax*.

Rule 7 deals with allowance of *directors' remuneration*.

Rule 8 deal with *remuneration paid to managing agents*.

Rule 9 deals with profits and loss of *unexecuted contracts*.

Rule 10 deals with *buildings erected during war*.

Rule 11 gives power to *make adjustments in deductions allowable for income-tax purposes*.

Rule 12 prohibits *unreasonable expenditure*.

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under Section 10 of the Indian Income-tax Act, 1922 :

*Provided that any sums (other than any interest paid by a firm to a partner of the firm) excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax :

Provided further that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax :

*This proviso was added by the Amendment Act of 1940, and the words within brackets were added by the Amendment Act of 1941.

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period: and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

Scope of Rule 1.—This rule corresponds to Section 14 (1) of the Finance (No. 2) Act of 1939. The first two provisos were added by the Indian Legislature. The main points laid down in the rule are:

(i) that profits of the standard period or the chargeable accounting period shall be separately computed for purposes of excess profits tax;

(ii) they shall be computed in accordance with the principles on which profits are computed for income-tax purposes under Section 10 of the Income-tax Act, subject to the provisions of this Schedule;

(iii) if profits of any standard period have been determined for income-tax purposes such profits shall be taken to be the profits for excess profits tax purposes subject to the adjustments required by this Schedule;

(iv) if the standard period or the chargeable accounting period does not correspond to an accounting period of the trade or business (*e.g.*, the standard period may be two years) such divisions and apportionments to specific periods of profits and losses and such aggregation of profits as may be necessary should be made;

(v) interest and salaries paid without British India which are included in profits for income-tax purposes only to secure collection of tax should be excluded;

(vi) the profits of insurance businesses (other than life insurance businesses which are exempted by the Act) have to be computed in accordance with the rules contained in the Schedule to the Indian Income-tax Act so far as they are applicable notwithstanding anything to the contrary in the Excess Profits Tax Act or this Schedule.

First proviso.—This proviso was added by the Amendment Act of 1940 to provide that interest or salaries paid without British India which are included in profits for income-tax purposes only in order to secure collection of tax are not to be included in profits for excess profits tax purposes. The effect of the proviso is this. Under the proviso

to Section 10 (2) (iii) no deduction will be allowed in respect of interest on borrowed capital which is paid outside British India except in the two cases specified there, and in respect of interest paid to partners of a firm. The present proviso enacts that these sums which are thus excluded from allowances under Section 10 shall, if paid, be included in those allowances when computing profits for excess profits tax. Again, under Section 10 (4) (a) any allowance in respect of a payment which is chargeable under the head salaries, if it is payable without British India and tax has not been paid thereon nor deducted therefrom under Section 18, will be disallowed. The proviso to this Rule enacts that such payments may be allowed for excess profits tax purposes.

Interest paid to partners.—There was a defect in the original Act which resulted in making interest paid to partners deductible for purposes of excess profits tax. This was remedied by the Amendment Act of 1941 by the insertion of the words “other than any interest paid by a firm to a partner of the firm” in the first proviso. It is to be observed that retrospective effect is given to this amendment by the Act of 1941.

Second proviso.—There is nothing corresponding to this in the English Act of 1939 and the trend of English decisions is that neither the tax payer nor the revenue is bound by the computation made for income-tax purposes for any previous standard period: See *Per Lord Wrenbury in the Glenboig Union Case* (12 Tax Cas. 427 at 465).

This is subject to the other rules especially Rule 2 which says that the provisions of the Amendment Act of 1939 should be applied.

The General rule.—The English Act of 1939, Section 14 (1), laid down that for the purposes of excess profits tax the profits shall be separately computed and shall be so computed on income-tax principles as adapted by the Schedule, and defined ‘income-tax principles’ as meaning the principles on which the profits arising from the trade or business are computed for the purposes of income-tax under Case I of Schedule D or would be so computed if income-tax were chargeable under that Case in respect of those profits. The Indian Act has only expressed the same principle in different language, language more allied to that of the Act of 1915.

The result of this rule is that unless there is some modification contained in the Schedule or in some other provision of the Act which applies and alters the principles on which income-tax is assessed, the principles on which income-tax is assessed are to be applied in the computation of profits for excess profits tax: *Legg & Son Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 391).

Separate computation.—The Rule provides that for income-tax and excess profits tax there should be separate computations of income. This is of course, subject to the second proviso which allows the computation of profits for income-tax purposes to be adopted so far as standard periods are concerned subject to such adjustments as may be necessary. This does not mean that the profits of each business should be separately computed when several businesses are

carried on by the same person, for Section 2 (9) provides that all such businesses should be treated as one. But, if there are businesses to which the Act does not apply, the profits of the other businesses should be separately computed.

Apart from the special modifications of the provisions of Section 10 contained in this Schedule, the Excess Profits Tax Rules in adapting Section 10 have omitted clauses (b) and (c) of clause (vi) of Section 10 (2) relating to carry forward of unabsorbed depreciation and have redrafted sub-section (7) which relates to insurance.

Change of basis of accounting.—Where the assessee's accounts are kept on the cash basis in the standard period and for the chargeable accounting period accounts on the mercantile basis are produced, the latter may be accepted provided the assessee agrees to the adoption of the same basis for computation of profits of the standard period also. A change over from one basis to another will not be allowed : *Notes and Instructions*, para 24.

Third Proviso.—Power to apportion for special circumstances will be exercised rarely and will not be exercised where the profits during different periods have varied by reason of circumstances which are ordinary incidents of or inherent in the conditions of the business and unless the case has been submitted to the Excess Profits Tax Adviser.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939, may not have been in force in the standard period.

Object of the rule.—This provision is intended to secure that the computation of profits in any *standard period* should be made on the same basis as the computation of profits in the *chargeable accounting period*. The two important results of this rule are : (i) that depreciation should be calculated on the written down value basis instead of on the cost basis, and (ii) income assessable on the arising basis in the chargeable accounting period but on the remittance basis in the standard period for income tax purposes should be computed on the arising basis for excess profits tax purposes.

This rule carries out the undertaking which the Finance Member gave before the Legislative Assembly that in determining what constitutes excess profits and in computing the income of the standard period on the one hand and the accounting period on the other *like would be compared with like* and if there were any changes in the law applying to income tax in the different periods, those sources of difference would be eliminated. This rule is intended to exclude the possibility of various types of hardships.

This is, of course, a general rule which is subject to the special provisions contained in the first proviso to rule (1) and in the subsequent rules of this schedule.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of Section 24 of the Indian Income-tax Act, 1922.

Scope of the rule.—This rule lays down two important modifications of the income-tax principles which should be made when they are applied to excess profits tax.

Sub-rule (1)—This prohibits the carrying forward of the depreciation allowance which is allowed by Section 10 (2) (vi) (b) and (c) of the Income-tax Act. In accordance with this rule in adapting the provisions of Section 10 to excess profits tax, clauses (b) and (c) of Section 10 (2) (vi) have been expressly omitted: see Excess Profits Tax Rules, Rule 3.

Sub rule (2).—This provides that no allowance shall be made in respect of any loss other than a loss sustained in a business to which this Act applies. A business here means all the businesses deemed to be one business under the provisions of Section 2 (5). Capital loss, cannot be deducted under ordinary principles of computing profits. Loss means loss computed in the same manner as for the purposes of this Act profits are to be computed: see Section 2 (16).

Sub-rule (3).—The intention of sub-rule 3 is to make explicit provision to prevent the carrying forward of losses under Section 24 (2) of the Income-tax Act although that section is not one of the sections of the Income-tax Act which are applied by Section 21 of the Act to excess profits tax. This sub-rule however, does not mean that expenses charged in the accounting period might be disallowed on the ground that the loss though appropriate to the accounting period was not actually made in that period.

The case law on what kinds of losses are allowable and principles for determining to what particular accounting period a loss belongs are dealt with at length at pages 63 to 76 *supra*: see also pages 100 to 102 *supra*.

Notes and Instructions paras 26 to 29 contain elaborate instructions and examples with regard to the computation of depreciation allowance for excess profits tax purposes.

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), (2A) and (4) of this rule and not otherwise.

(2) In the case of the business of a building society, or of a money lending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under Section 10 of the Indian Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

*(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.

(3) Notwithstanding anything contained in sub-rule (2) or (2A), where the profits of a subsidiary company are under the provisions of Section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under Section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act.

5. Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

* This sub-rule was added by the Amendment Act of 1940 and incorporated part of the provisions of Section 40 of the English Finance Act of 1940 which added clause (aa) to part 7 of Schedule IV to the Finance Act of 1937.

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

Source of the Rule.—This rule deals at length with income from investments. Sub-rules (1), (2) and (5) correspond to sub-rules (1), (2) and (3) of Rule 6 of Part I of the Seventh Schedule to the Finance (No. 2) Act of 1939. Similar provisions existed also in Finance (No. 2) Act of 1915, Fourth Schedule, Part I. Sub-rules (3) and (4) were added by the Indian Legislature. Sub-rule (2A) was added by the Excess Profits Tax (Amendment) Act of 1940.

Treasury bills and treasury bonds.—These should be regarded as investments. See *Notes and Instructions*, para 78.

Bank overdrafts and fixed loans.—See *Notes and Instructions*, para 82.

Bank interest on current account.—Bank interest on a trading company's daily balance on its current account is income received "from investments or other property within the meaning of paragraph 7 of Schedule IV to the Finance Act, 1937, and is accordingly excluded from the computation of the company's profits for national defence contribution under Section 19 (1) of the Act: *Inland Revenue Commissioners v. Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.* [1941] (1 I.T.R. Suppl. 14). But it may often be more advantageous to an assessee to treat this as profit and claim the bank balance as money required for the purposes of the business and so to be included in average capital employed. Notes and Instructions issued by the Central Board of Revenue however provide that bank balances on current account are not investments, but it may be necessary to treat some part of them as moneys not required for the purposes of the business: see para 78.

The history of the law relating to investments, the meaning of the word 'investment' and the leading cases on the subject of investments are dealt with *infra* under Sch. II, Rule 3.

Sub-rules (1), (2).—The cases where income from investments can be taken into account are mentioned in these sub-rules. These are :

'Wholly or mainly'.—As to the interpretation of these words see pp. 16-17 *supra*.

'Dealing in or holding of investments'.—The words used in the Act of 1915 were 'making of investments'. Meaning of the word 'making' was considered in *Commissioners of Inland Revenue v. Tyre Investments Ltd.* (12 Tax Cas. 646). In the English Act of 1939 and the Indian Act of 1940, the clearer expression 'dealing in or holding of investments' has been used. Stock-jobbers fall within this class. With regard to *holding* of investments only companies and incorporated societies are within the charge but as to *dealing* in investments all persons are liable to the tax.

Income from investments in companies the profits of which have been subjected to excess profits tax.—Rule 20 of the E. P. T. Rules provide for relief in the case of companies the profits of which include dividends from companies themselves liable to Indian excess profits tax.

Grossing up of dividends.—Though Sch. 1, r. 6, provides that no deduction shall be made on account of liability to income-tax it should be noted that Sec. 16 (2) of the Income-tax Act which provides for grossing up of dividends by reference to income-tax for purposes of total income is not applicable to excess profits tax consequently where dividends received have not been subjected to income tax the actual amount without grossing up should be taken into account.

Sub-rule (2A)—This sub-rule was inserted by the Amendment Act of 1940. The object is to provide that in the case of banking, insurance or dealing in investments which forms part of a business *not consisting wholly or mainly* in such activities and not, therefore, within Rule 2 of this Schedule, the investment income from such part business is to be included in profits for excess profits tax purposes.

Sub-rule (3).—The object of this sub-rule is to secure that where, under Sec. 9 of the Act, profits of a subsidiary company are included in the excess profits tax assessment of the principal company dividends from the subsidiary company out of such profits should not also be included in such assessment.

Sub-rule (4).—This sub-rule relates to income from a business which consists wholly or partly in the letting out of property on hire. In such cases income from the property must be included. The words used here are '*wholly or partly*' and not '*wholly or mainly*' which is used in sub-rules (2) and (2A). Generally speaking letting out property on hire by private individuals would not amount to business: cf. *Council of State Debates*. In *Sangster's case* (12 Tax Cas. 208 at 216) Rowlatt, J., said: "Supposing he (a man) has got land and keeps on building on it and never sells it at all, but has rent from the houses that he builds, is he carrying on a business? One cannot help feeling that the answer to that must be 'No', because he is merely investing his money in new property and keeping it; he is not dealing with it in any way." See also *Korean Syndicate case* (12 Tax Cas. 181) and *Commissioners of Inland Revenue v. Birmingham Theatre Royal Estate Co.* (12 Tax Cas. 580). Patent rights are property and income from licenses are subject to tax: *Notes and Instructions*, para 31. Though the words used in this rule are '*wholly or partly*' and not '*wholly or mainly*' which are used in Sec. 2 (5), this rule cannot enlarge the definition of business contained in Sec. 2 (5). *Notes and Instructions* contain some illustrations.

Sub-rule (5).—This sub-rule deals with the consequence of excluding income from investments on the allowance for interest on borrowed capital. If the income from an investment is excluded the capital borrowed in respect of which interest can be allowed will be deemed reduced to the extent of the investment the profits of which are excluded. For the effect of this provision, especially in connection with overdraft from banks see the speech of Mr. S. P. Chambers: *Legislative Assembly Debates and Notes and Instructions*, para 82.

The proviso draws a distinction between companies and other persons in the matter of reduction of the capital borrowed for purposes of allowing interest on borrowed capital. In the case of companies the capital borrowed will be deemed to be reduced to the extent of the value of the investments. In the case of other persons it is only if the investments are mortgaged, charged or pledged as security for the loans, that borrowed capital will be deemed to be reduced under this sub-rule. It is the value and not the cost of the investments that is to be set off against borrowed money.

5. If at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of Rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

Interest on loans from banks and on debentures borrowed to increase capital.—Where increase in capital has been effected after the standard period by raising loans from banks or debentures a somewhat similar principle is applied. Interest on the loan or debentures will not be allowed to be deducted and the loan will not be deducted in arriving at the amount of capital employed. This rule provides relief in cases where a business has been expanded with capital borrowed from a bank or by debentures. The effect will be to substitute as a charge in computing the profits liable to excess profits tax the statutory percentage for the interest actually paid on the loan. An allowance of the standard percentage of 8 or 10 per cent. is given as against the actual rate of interest which would normally be much less. This provision is not contained in the English Act nor in the original Bill but was added by the Select Committee. It should be noted that the rule applies only in so far as the borrowed money increases the capital employed in the business for purposes of excess profits tax.

This provision is confined to loans borrowed from *bona fide* banking businesses. With regard to all moneys *bona fide* borrowed for business purposes see Rule 5A *infra*.

A *bona fide* banking business may be carried on even by private banks. Mere money-lending does not amount to banking business. Schedule II rule 2 referred to here lays down the general rule that borrowed money and debts shall be deducted in computing the average amount of capital employed.

'Bona fide' banking business—meaning of.—It should be observed that, provided that the business is a '*bona fide* banking business' Rule

5 may be applicable whatever the status of the 'person' carrying it on. The Rule is not restricted to banking companies. The bona fide business of a bank is to receive moneys from customers on current account, to make loans and to arrange for transfer of money from one person to another : *Notes and Instructions* para 34.

New companies.—This rule is intended also to apply to new businesses to which none of the optional standard periods apply. The entire borrowing effected by means of loans or public debentures should be treated as capital in such cases : *Notes and Instructions* para 34.

5A. (1) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of Section 7A of this Act :

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of Section 6 of this Act :

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of Section 6, or by the Central Board of Revenue under sub-section (1) of Section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in Rule 2A of the Second Schedule

"borrowed money" means borrowed money which, apart from the provisions of the said Rule 2A, would have been deductible in computing capital.

Object of the Rule.—This Rule must be read with Rule 2A of Sch. II. These rules recognise not only what has been claimed to be an invidious distinction made by the existing rule 5 of the First Schedule

between money borrowed from a person carrying on a *bona fide* banking business and other borrowed money, but also the fact that the borrower bears some risk in respect of *any* borrowed money. The rules, therefore, as from the 1st April, 1941, treat all borrowed money as capital both as regards the standard period, if any, and as regards the chargeable accounting period, so that the comparison of average capital required by the Act is to include the borrowed money as well as the proprietors' capital so far as this capital is employed in the business, and they provide for the corresponding inclusion in profits of the interest, etc., payable in respect of the borrowed money. The effect of this clause may be illustrated by an example :

	Standard period. Rs.	Chargeable Accounting period. Rs.
Average capital	5,00,000	6,00,000
Average borrowed money	1,00,000	2,00,000
Profits for F.P.T. purposes on old basis	50,000	1,00,000
Interest payable	5,000	10,000
Liability on old basis—		
Profits of chargeable accounting period		1,00,000
Standard Profits	50,000	
Add 10 per cent. on increased capital (Rs. 1,00,000)	10,000	60,000
Excess profits		40,000
Liability on new basis—		
Profits of chargeable accounting period	1,00,000	
Add interest payable	10,000	
		1,10,000
Profits of standard period	50,000	
Add interest payable	5,000	
	55,000	
Add 10 per cent. on increased capital (Rs. 2,00,000) including borrowed money	20,000	75,000
Excess profits		35,000

Provision is made to secure that in the case of a business to which, for any chargeable accounting period, the minimum standard of Rs. 36,000 a year applies, or, in respect of which an award of a substituted standard of profits has been given under Section 6 (3) by a Board of Referees or under Section 26 (1) by the Central Board of Revenue, the new provisions shall not operate to deprive the assessee of the benefit that accrues to him by reason of the minimum standard or of such award.

Departmental Instructions.—Paras 33, 34, 34A, 34B of the *Notes and Instructions* issued by the Central Board of Revenue (pp. 15 to 21) contain elaborate instructions and examples on the application of the rules relating to borrowed money.

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. * (1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

(a) in computing the profits for that accounting period ; and

(b) if the standard profits of the business are computed by reference to the profits of a standard period also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration.

(2) In sub-rule (1) of this rule the expression "directors' remuneration" does not include—

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share capital of the company, or

(b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

† (3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

(a) have during any part of that accounting period, or

(b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in

* Sub-rule (1) of this rule is printed here as amended by the Amendment Act of 1940.

† This sub-rule was added by the Amendment Act of 1940.

computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any).

History of the law relating to directors' remuneration.—This rule lays down the conditions in which and the extent to which directors' remuneration can be allowed in the computation of profits of the chargeable accounting period. The history of the law on the subject may be briefly summarised as follows :

(i) The Finance (No. 2) Act of 1915, Schedule IV, Part I, para 5, provided that no deduction for remuneration of directors shall exceed the sum allowed for those purposes in the last pre-war trade year or a proportionate part thereof, as the case may be, unless there are special circumstances or the remuneration depends on the profits.

(ii) The Finance Act of 1916 introduced the rule that a director-controlled company may be treated as if it were a firm and the directors thereof, as if they were partners of the firm, in cases where the pre-war standard of profits is taken to be the percentage standard or is calculated by reference to the statutory percentage; and defined 'directors' as including 'any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business': See Section 49 (1) and (3).

(iii) The Finance Act of 1937 in providing for the computation of profits for National Defence Contribution laid down that in the case of director-controlled companies the allowance for directors' remuneration shall not exceed 15% of the profits except in the case of whole-time service directors, or £ 1,500 whichever was greater, subject to a further maximum of £ 15,000. The definition of 'director' was expanded into the form in which it now appears in the Finance Act of 1939 and the Indian Excess Profits Tax Act of 1940. The term "whole-time service director" was also defined.

(iv) The Finance (No. 2) Act of 1939 laid down the following provisions in Sched. 7, rule 10. In the case of director-controlled companies (i) where the standard profits are computed on the basis of the *profits of the standard period* deduction for directors' remuneration shall not exceed the amount paid during the standard period or the proportionate amount where the length of the period varies. (ii) In the other case, *i.e.*, where it is based on *statutory percentage* no deduction shall be allowed. The remuneration of whole time service directors was excluded from the operation of the rule by inserting a new definition of "directors' remuneration" adopting the principle of the definition of 'whole-time service director' contained in the Finance Act of 1937. See Sched. 7, para 10, of the Finance (No. 2) Act of 1939.

(v) The Indian Excess Profits Tax Act of 1940 adopted verbatim the provisions contained in the Finance (No. 2) Act of 1939, but added a new clause to the definition of "directors' remuneration" (sub-rule (2) of Rule 10 of the English Act) excluding from that expression the remuneration of managing agents where such remuneration is included

in the profits of the managing agents' business for purposes of excess profits tax.

(vi) The Excess Profits Tax (Amendment) Act of 1940, following Section 33 (5) of the Finance Act of 1940 of the United Kingdom has considerably simplified the law. It has also corrected the anomaly which existed in the section before it was amended, namely, that in the case of a director controlled company, while the excess of the directors' remuneration in a chargeable accounting period over that in the standard period was disallowed, no allowance could be made in the converse position. Further, the new provision also enables proper adjustments being made in a case where a company was director-controlled in the standard period but not in a chargeable accounting period or where the converse position obtains.

Present law—The scheme adopted now is to disallow deduction of directors' remuneration altogether in computing the profits both of the accounting period and of the standard period where standard profits are based on the profits of the standard period in the case of director-controlled companies. Where the directors had a controlling interest (a) during a part of *that* accounting period or (b) during the whole or any part of *any previous accounting* period which includes the whole or any part of a chargeable accounting period or a standard period, the Central Board of Revenue may direct otherwise.

The policy of the Legislature is to treat companies in which the directors have a controlling interest like firms and to disallow deduction of directors' remuneration in computing profits just as no allowance is made for partners' salaries.

Sub rule (1).—This sub-rule was wholly redrafted by the Amendment Act of 1940 and the new principle stated above was enacted. The words 'throughout that accounting period' in the first paragraph were added by this Act.

Controlling interest.—It is necessary under the present section to determine with regard to each chargeable accounting period whether the directors had a controlling interest. The meaning of the expression 'controlling interest' and the decisions in which that expression was construed by the English Courts are considered at some length at pp. 32-33 *supra*. The decision in *British American Tobacco Co. v. Inland Revenue* cited there was recently affirmed by the House of Lords: See 1943 L.T.R. Suppl. 29.

Sub rule (2): Whole-time service directors.—The exclusion of the remuneration of whole-time service directors from the rule disallowing directors' remuneration which was introduced by the Finance Act of 1937 with regard to computation of profits for national defence contribution has been retained in the Finance (No. 2) Act of 1939 and the Indian Act of 1940. Instead of defining 'whole-time service director' as in Finance Act of 1937 the later Acts have defined "directors' remuneration" and excluded from this term the remuneration of whole time service directors. 'Directors' remuneration' in Sub-Rule (3) includes the remuneration of wholetime service directors although the remuneration of such directors is excluded from Sub-rule (1).

'Remuneration'.—This is a wide term and will include what a director receives as fees and what he receives as a salary for any managerial or technical position which he may hold.

Whether a director has *devoted substantially the whole of his time* to the service of the company in a managerial or technical capacity is a question of fact. It is easy to decide whether a director is acting in a technical capacity. Whether he acts in a managerial capacity is more difficult to decide. The word manager is a wide word and managerial capacity would include all services relating to the administration and conduct of the company's business provided the services are not those of a subordinate or employee but of a manager of the business. A person may act in a managerial capacity even though he is not designated as a manager and some one else may bear that designation.

Remuneration paid to a whole-time service director will be allowed only where he is not a beneficial owner of, or able to control, more than 5% of the ordinary share capital of the company. The term 'ordinary share capital' is defined in Sec. 2 (16A) of the Act.

In the definition of 'director' in Sec. 2 only the term 'beneficial ownership' is used. Here 'or able to control' etc., are added and this makes the provision more strict.

Managing agents.—The Indian Act has introduced a new clause in sub-rule (2) to place remuneration of a managing agent where such remuneration has been included in the profits of the managing agent's business for purposes of excess profits tax, on the same footing as remuneration of whole-time service directors, i.e., for the purpose of getting an allowance in respect of such remuneration in computing the profits. This provision must be read with the next rule, r. 8, which prohibits allowance of a higher rate of remuneration than what was allowed during the standard period.

Sub-rule (3): When a company was director-controlled only during a part of an accounting period or standard period the matter must be referred to the Excess Profits Tax Adviser: *Notes and Instructions*, para 37.

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

Managing agent's remuneration.—Nothing corresponding to this rule appears in the English Acts. The rule was added by the Select Committee and its purport is to disallow for the purpose of excess profits tax payment to managing agents of a remuneration at a higher

rate than the rate that was in force in the standard period. This provision had to be inserted in view of the insertion of clause 2 (b) to rule 7 in the Indian Act. 'Subjected to tax' means actually subjected to tax and not merely liable to be taxed, that is, there must be an assessment on the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein :

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

Continuing contracts.—The first paragraph of this rule is taken from the Finance (No. 2) Act of 1939; the proviso was added to it by the Indian Legislature. Under income-tax principles unless there is an ascertained profit or loss these cannot be taken into account. This rule lays down a departure from this principle for purposes of excess profits tax and provides that such proportion of the entire profit or loss which has resulted, or which may be estimated to result, from the complete performance of the contract as may be attributed to the accounting period may be taken into account.

This principle was adopted by the Finance Act, 1937, for purposes of national defence contribution and is to be found also in para 11 of Part I of Schedule 4 of the Finance (No. 2) Act of 1915.

Series of contracts.—It is necessary to distinguish between a continuing contract and a series of different contracts. In *London Theatre of Varieties Ltd. v. Commissioners of Inland Revenue* (1930) 9 A.T.C. 512 a company made long term contracts with some artists for weekly performances at high salaries. The salaries which the contracts provided for after the war were higher than the usual salaries. The company claimed that the salaries should be spread over the relevant accounting periods. Mr. Justice Rowlatt held that the contracts were not really long contracts in the sense that each of them was one contract, the duration of which extended over several accounting

periods ; but that the contracts were really provisions for the engagement of the artists in advance. There was a series of weekly engagements, the length of the series being fixed beforehand and such an arrangement was quite different from a contract which begins in one accounting period and cannot be completely performed until one or more other accounting periods has elapsed.

Discretion of Excess Profits Tax Officer.—Whether an apportionment should be made and attributed to the chargeable accounting period or not is a matter for the discretion of the Excess Profits Tax Officer and his decision, being one in a discretionary matter is not open to appeal: See *John Smith & Son v. Moore* (12 Tax Cas. 266), *France Fenwick & Co.'s case* (1918, 1 K.B. 133), *Williamson Film Printing Co. Ltd. v. Commissioners of Inland Revenue* (1918, 2 K.B. 720), *Thomas Hinshelwood v. Commissioners of Inland Revenue* (12 Tax Cas. 417) and *Auld and Pemberton v. Commissioners of Inland Revenue* (1919, 2 Ir. R. 66). These cases were decided under the corresponding provision of the Finance (No. 2) Act of 1915.

The proviso.—The proviso was added by the Indian Legislature to provide for adjustment of the profit or loss when the contract is completed and the final results are ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

Departmental Instructions.—Instructions provide that this rule should in general be applied only (a) when its application is sought by the tax payer (b) when it appears from the accounts or otherwise (*e.g.*, from an increase or decrease of the item “work on uncompleted contracts” where the full profit on the work performed is not credited year by year), that its application would effect an important change in the amount assessable, to the advantage either of the assessee or the Revenue. In other cases if the accounts have been consistently made up the application of the rule is unnecessary: *Notes and Instructions*, para 45.

Obsolescence of buildings erected during war.—This rule was added by the Indian Legislature (the Select Committee) to provide for special treatment of *buildings erected during the period of war* which might on the cessation of war conditions become almost valueless. The case of new machinery and plant which may have to be scrapped at the end of the war is provided for by the obsolescence provisions of Sec. 10 of the Indian Income-tax Act: See *Report of Select Committee*.

11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.

General power to apportion deductions.—This rule was inserted by the Excess Profits Tax (Amendment) Act of 1940 and its object is to give power to the Excess Profits Tax Officer to make suitable adjustments in cases where, either in the standard period or in a chargeable accounting period a deduction is allowable for income-tax purposes which does not represent a sum reasonably and properly attributable thereto. The rule allows a more equitable comparison of the profits of the two periods in question.

(1) The power is a wide one and applies to any accounting period, whether it be a standard period or a chargeable accounting period and it applies to all deductions.

(2) It is to be exercised when in the opinion of the Excess Profits Tax Officer a deduction allowable for income-tax purposes does not represent a sum reasonably and properly attributable to the accounting period.

(3) If he is of such opinion he may allow only such part of the deduction as appears to him to be reasonably and properly attributable to that period.

(4) The balance of the deduction shall be treated as attributable to other accounting period or periods as he thinks proper.

The following examples of deductions which may be proper subjects for the application of Rule 11 are given in the *Notes & Instructions* (para 46): (a) initial payments for kinema apparatus under hire contracts such as that in *Hakim Prasad, In re*, 9 I. T. C. 181; (b) allowances under Sec. 10 (2) (vii) of the Indian Income-tax Act; (c) mineral royalties with a minimum rental payable under mineral leases. Rule 11 is however inapplicable to deductions for bad debts.

The Excess Profits Tax Officer should make a report to the Excess Profits Tax Adviser for instructions where he intends to apply Rule 11.

Appeal from orders.—Orders made under this section are appealable at the instance of the aggrieved person to the Board of Referees through the Excess Profits Tax Officer. The period of limitation is 45 days from the date of communication of the order.

***12.** (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal.

(3) *In relation to chargeable accounting periods ending after the 31st day of December, 1942, the Central Government may make rules for determining the extent to which deductions shall be allowed in respect of bonuses or commissions paid.*

Object of the Rule —This rule is designed to prevent the dissipation of excess profits by expenditure that has no relation to the requirements of the business, the major part of the cost of which might be met out of reduced taxation. The test is whether the expenditure is unreasonable and unnecessary having regard to the requirements of the business, and in the case of directors' fees or other payment for services to the actual services rendered. The rule should not be applied to increases that can be justified on ordinary commercial principles : *Notes and Instructions*, para 46A. In order, however, that this power of disallowance should not be exercised without the fullest consideration, it is provided that the authority of the Commissioner of Excess Profits Tax is to be a condition precedent to its exercise, and further the assessee is given the right of appeal to the Appellate Tribunal in the case of any disallowance under this provision. The Commissioner would ordinarily refer the matter to the Excess Profits Tax Adviser.

*This rule was inserted by the (Second Amendment) Act of 1941.

†This sub-rule was inserted by the Excess Profits Tax Ordinance, 1943.

SCHEDULE II.

[See Section 2 (3).]

Rules for Computing the Average Amount of Capital.

History of the Schedule.—This Schedule which lays down the rules for computing the average amount of capital employed in a business is framed on the lines of Part II of the Seventh Schedule to the Finance (No. 2) Act of 1939. Part III of the Finance (No. 2) Act of 1915 also contained rules for computing the amount of capital of a trade or business. The Indian Excess Profits Tax Act, 1940, adopted the rules contained in the Act of 1939 with the exception of sub-rule (4) of Rule 1 and added Rules 4 and 6. The Amendment Act of 1940 effected some changes in sub-rule (2) of Rule 1 and added a para to sub-rule (1) of Rule 2 and added a new rule as Rule 7. The object and scope of these amendments are considered below under the respective rules. Rule 2 A was added by the Second Amendment Act of 1941.

Importance of average amount of capital:—The average amount of capital employed in a business has to be ascertained for the purposes of computing the standard profits in certain cases, *viz.*, (i) where there is a decrease or increase of capital in the chargeable accounting period and (ii) in the case of businesses in respect of which a standard period is not available and businesses started after 31st day of March 1936 which have an option to adopt the statutory percentage basis or the basis of profits of standard period. Section 2 (3) of the Act provides that average amount of capital employed in any business shall be computed in accordance with the Second Schedule and the rules for computing the average amount of capital are accordingly given in this schedule.

Scope of the Schedule.—The rules laid down in this schedule relate to the following matters:

Rule 1 deals with the valuation of *assets other than money* including debts; *Rules 2 and 2-A* deal with *borrowed money*; *Rule 3* deals with *investments and moneys not required for the business*; *Rule 4* contains special rules as to *shipping*; *Rule 5* deals with *profits or losses*; *Rules 6* deals with cases where *part only of a business is assessable*; *Rule 7* provides for assets which were inherently unproductive in the standard period but became productive in the chargeable accounting period.

1. (1) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

(a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified:

(b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions;

(c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax and in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

Sub-rule (1): Assets not consisting of money—Assets not consisting of money are divided into 3 classes: (i) assets purchased on or after the commencement of the business; (ii) debts; (iii) any other assets. In the first case the value is the price paid; in the case of debts the nominal amount of the debt and in the last case the value of the assets when they became assets of the business. All these are subject to certain deductions.

Sub rule (2): Deductions to be made.—In the case of assets other than debts such deductions should be made for depreciation as are necessary to reduce the assets to their written down value and also such other deductions in respect of reduced values of assets as are allowable for income-tax purposes. In the case of debts, deductions allowed for income-tax purposes should be made. The words 'and to such other deductions in respect of reduced values of assets as are allowable for the purposes of income-tax' were inserted by the Amendment Act of 1940.

Sub-rule (3): Assets acquired otherwise than for cash—In the case of such assets the price paid is the then value of the consideration actually given. In para 3 of Part III of Sch. IV of the Finance (No. 2) Act of 1915 the words used were 'the value of the consideration *at the time the asset was acquired*'. The word '*then*' evidently refers to the time when the price was satisfied. In *Hamer v. Commissioners of Inland Revenue* (1921, 1 K.B. 60) it was held in the case of a patent taken out by a person, that its value was what it was actually worth at the time when it became an asset of the trade, without reference to what it turned to have been worth in the light of subsequent events.

Where vast improvements have been made in an acquired asset difficult questions may arise in applying the provisions of this rule. In *Sungei Rinching Rubber Co., Ltd. v. Commissioners of Inland Revenue*

(1925, 133 L.T. 670) a rubber company had purchased jungle land and transformed it into a rubber estate and it was held that the Commissioners were not justified in valuing the estate for computing the capital employed at the purchase price of the uncleared land. The value of the estate had to be taken as at the time at which it first took shape as such. On the contrary in *Merlimau Rubber Estates Ltd. v. Commissioners of Inland Revenue* (1923 A.C. 283) it was held that because development had taken place it did not follow that the original asset had lost its identity. Whether an asset has been improved to such an extent as to make it a new asset and to bring it within clause (c) is a question of fact.

2. (1) Any borrowed money and debt shall be deducted, and in particular [there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax or for advance payments due under any provision of the Indian Income-tax Act 1922, or for any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943).]

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(a) in the case of income-tax and super-tax on the last day of the period of time within which the tax is payable under Section 45 of the Indian Income-tax Act, 1922 ;

(b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

+† [(c) in the case of any advance payment due under any provision of the Indian Income-tax Act, 1922 (XI of 1922), on the date on which, under the provisions of that section, the payment first became due ;

(d) in the case of any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943), on the date on which, under the provisions of that section, the further sum became payable.]

* The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes

† This is printed as amended by the Indian Finance Act, 1944.

†† Sub-clauses (c) and (d) were added by the Indian Finance Act, 1944.

* This paragraph was added by the Amendment Act of 1940.

of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

History of the law relating to borrowed money and debts.—This rule corresponds to Para 2 of Part I of the Seventh Schedule to the Finance (No. 2) Act of 1939 which in its turn is based on Para 2 of Part III of the Fourth Schedule to the Finance (No. 2) Act of 1915. The Act of 1915 contained a simple provision that any borrowed money or debts shall be deducted in computing the amount of capital for the purposes of Part III of that Act.

The Act of 1939 repeated this provision and added that in particular any debt for income-tax, or excess profits tax, or national defence contribution shall also be deducted, and laid down when such debts must be deemed to have become due.

The Indian Act of 1940 followed the English Act of 1939 but this rule was made subject to the provision of Rule 5 of Schedule I of the Indian Act (to which there is nothing corresponding in the English Act) that in the case of loans from banks, and debentures raised and used for increasing capital, the amount of such loan or debenture shall not be deducted in computing the capital, and interest thereon shall not be deducted in computing profits. Following the U. K. Finance Act of 1940, the Excess Profits Tax (Amendment) Act of 1940 introduced a new paragraph at the end of sub-rule (1) to the effect that the debts to be deducted shall include such sums in respect of accruing liabilities as are allowable as deduction in computing profits.

The Second Amendment Act of 1941 has completely altered the law by enacting a general rule (Rule 2A) that no deduction shall be made in respect of borrowed money.

Sub-rule (1) : Income tax, super tax and excess profits tax.—All debts due for income-tax, super-tax or excess profits tax in respect of the business should be deducted in computing the capital. The time when such debts shall be deemed to have become due is also specified.

The Indian Finance Act of 1944 added advance payments of income-tax and sums payable under the Excess Profits Tax Ordinance, 1943, within the scope of the sub-rule.

Allowances on accruing liabilities.—The last paragraph of sub-rule (1) which was inserted by the Amendment Act of 1940, provides for deduction of allowances on accruing liabilities. In respect of such liabilities such sums should be deducted as would be allowable as a deduction in computing profits for excess profits tax purposes, even though they have not become payable.

Sub-rule (2): Relief for deficiencies.—Sub-rule (2) lays down how the provisions of sub-rule (1) with regard to deduction of excess profits tax are to be applied in a case where relief for deficiency of profits is granted. The effect of this rule is that when relief for deficiency is given under Section 7 of the Act, a reopening of the computation of capital is unnecessary. A provision somewhat similar to that contained in the proviso to Section 12 as to repayments is to be adopted, that is to say, the amount of excess profits tax paid shall not be deemed to be reduced, but the amount of relief has to be treated (i) *as an asset of the business* and (ii) to have become so on the first day after the end of the chargeable accounting period in which the deficiency occurred; in other words, as an asset in the computation of the capital employed in the chargeable accounting period which follows the period in which the deficiency occurred. It is not very clear as to what is to be done where the deficiency is so great that it has to be carried forward to subsequent years, whether in such a case the whole deficiency is to be treated as an asset of the next year or has to be distributed.

Decisions.—The meaning of 'debts' and 'borrowed money' used in the corresponding provisions of the Finance (No. 2) Act of 1915 was considered in *Port of London Authority v. Inland Revenue* (1923 A.C. 507). The House of Lords said that to bring the provision as to borrowed money into operation there must be a real loan and a real borrowing and that 'debt' does not include all 'liabilities' but only debts involving an obligation upon the owner similar to that resting upon him in respect of borrowed money, that is to say, debts in the ordinary course.

2 A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2-A) of the said rule applies, no deduction shall be made in respect of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of Section 7-A of this Act :

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.

This rule and rule 5-A of Schedule I with which it is closely connected were added by the Second Amendment Act of 1941. For the object and scope of this rule reference may be made to the notes to rule 5-A of Schedule I. The method in which this rule is to be applied is laid down in Section 7-A.

3. (1) Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys or *as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stock of raw materials** not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

(2) *The Central Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials.*

History of the law relating to investments.—(i) The Finance (No. 2) Act of 1915, 4th Sch., Part I, para 8, provided that *in estimating the profits* no account shall be taken of income received from investments (except in the case of life assurance business and businesses where the principal business consisted of the making of investments); and Part III, para 2, provided that any capital the income on which is not taken into account for the purpose of Part I of the Schedule, shall be deducted *in computing the amount of capital* for the purposes of Part III of the Act. (ii) The Finance (No. 2) Act of 1939 enacted the same principle in Rule 3 of Part II of its Seventh Schedule, and added the further provisions : (i) all moneys not required for the purposes of the trade or business shall also be left out of account, and, (ii) that where any investments are left out of account, the sum to be deducted under the preceding Rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of such investments;

* Sub-clause (2) and the words printed in italics in sub-clause (1) were added by the Excess Profits Tax Amendment Ordinance, 1943.

(iii) in the case of a person other than a body corporate the last mentioned rule was to operate only if the investments were charged, mortgaged or pledged as security for the loan.

(iii) The Indian Act of 1940 has followed the provisions of the Finance (No. 2) Act of 1939.

Moneys not required for the purposes of the business.—Moneys not required for the purposes of the business are not to be taken into account in the computation of capital. This is an absolute rule and does not depend on whether the money is an investment within the meaning of that word or not. These words were introduced by the Act of 1939 and the object is evidently to include all such moneys as are temporarily invested if they are not required for the purposes of the business.

In the case of money-lending, banking, and certain other businesses income from investments can be included in computing profits under rule 4 (2) of Schedule I and the amount of the investment can be taken into account under this Rule 3. But even in this case 'moneys not required for the purposes of the business' should not be taken into account. The recent decision of the Judicial Committee in the *Punjab Co-operative Bank's Case* (1910 L.T.R. 635) shows that ordinarily banks have to make investments for carrying on their business.

Investments and borrowed capital.—The rule of exclusion of investments from capital (except in the case of the specified businesses) is coupled with the rule that where borrowed money is deducted, the principal amount of such money should be deemed to be reduced to the extent of the value of the investments, a rule similar to that enacted in Rule 4 (5) with regard to deduction of interest on borrowed capital. The rule in regard to this is subject to the proviso that where the person carrying on the business is not a company the borrowed money will be deemed reduced to the extent of the investments only if the investments are mortgaged, charged or pledged as security for the loan.

Capital and assets distinguished—It is essential to distinguish what capital means as distinguished from assets. The assets of a firm, company or business mean its property in the business for the time being. If 2 partners put in £ 5,000 each, £ 10,000 is the capital at the start. If the assets increase from the trading by £ 1000 per annum the £ 1000 is not capital but profit. If it is allowed to remain in the business it remains profits; undrawn profits continue profits: *J. & R. O'Kane & Co. Ltd.* (12 Tax Cas. at p. 336). See however Rule 5 *infra*.

Fixed and circulating capital—'Fixed capital' is property acquired and intended for retention and employment with a view to a profit as distinguished from 'circulating capital' meaning property acquired or produced with a view to resale or sale at a profit. The appreciation or depreciation of fixed need not, but that of circulating must, be the subject of entry in the profits and loss account: *Buckley on Companies* quoted in 12 Tax Cas. at p. 386. Farwell, L.J., followed Mill in distinguishing circulating capital which fulfils the whole of its office in the production in which it is engaged by a single use from 'fixed capital' which exists in a durable shape and the return to which is spread over a period of corresponding duration (12 Tax Cas. at p. 337).

Adam Smith described fixed capital as what the owner turns to profit by keeping it in his own possession, circulating capital as what he makes profit of by parting with it and letting it change masters. The latter circulates in this sense. Lord Haldane said that this distinction has become classical and economists have never been able to define much more precisely what the line of demarcation is: *John Smith & Son v. Moore* (12 Tax Cas. at pp. 282 & 283).

In *Craig Ltd. v. Commissioners of Inland Revenue* [1914] S.C. 338, Lord Johnston stated very clearly the difference between fixed and floating assets. The fixed capital assets comprise, he said, land, leases, works and plant. But, he continued, there were other assets of a different kind, namely, the floating assets consisting of the stocks of material to be worked up and of the manufactured articles to be sold. With these the company had to commence business and it was on the turn over of these and their replacement by further material and further manufactured articles that the company was to make its profits or loss: *Per* Viscount Finlay in *John Smith & Son v. Moore* (12 Tax Cas. at p. 293).

Investment and capital distinguished.—The assessee, a company carrying on the business of 'coal merchants, brokers and exporters' were the sole selling agents of a Colliery Company in which the former owned most of the share capital and also some of the debentures. The coal produced by the Colliery Company was sold by the assessee company in their own name to their customers, and monthly payments were made to the Colliery Company of the prices realised less commission at a certain rate. The assessee company took the risk of bad debts. For some years the Colliery Company was doing badly and in order to provide it with sufficient cash resources to raise the coal the assessee company made payments largely in excess of the sum due for coal actually received. The sums bore no interest and were advanced without security. Upon these facts the Commissioners held that the advances so made by the assessee company to the Colliery Company were investments and did not form part of the capital employed in the assessee's business within the meaning of Part III of the Finance (No. 2) Act of 1915 relating to excess profits duty. The Court of Session (Lord Salvesen, Lord Mackenzie and Lord Skerrington) held, reversing the decision of the Commissioners, that in a reasonable and commercial sense the money so advanced was capital employed in the business of the assessee company of coal brokers and coal merchants. Lord Salvesen referred to the case of *Reid's Brewery Company Ltd. v. Male* [1891] (2 Q.B. 1; 3 Tax Cas. 279) (in which a Brewery Company carried on as an adjunct of this business that of bankers and money-lenders and in the course of such business lent money to their customers on security and it was held that the money advanced to the customers was money used in the business and not capital invested) and said that the present case was *a fortiori*, as there was only one business here and it was found necessary for the purposes of that business and with a view to increasing the profits to use some of their working capital in making advances to the company of which they held the sole selling agency. Lord Skerrington referred to the fact that

the moneys were advanced not from a benevolent motive or for safeguarding their investments but to further the interests of their business as coal merchants: *James Waldie & Sons Ltd. Commissioners of Inland Revenue* (12 Tax Cas. 113; 1919 S.C. 697).

Investments: law relating to.—The effect of the provisions relating to investments is that in estimating profits for the purposes of the Act no account is to be taken of income from investments except in the special cases referred to and that in estimating capital for the same purposes, investments are to be deducted and excluded. The reason for this exclusion may have been, as Lord Cave, L.C., has observed in *Gas Lighting Improvement Co.'s Case* (12 Tax Cas. at p. 534) that the intention being only to tax excess profits out of the actual carrying on of a trade or business, it was thought right to exclude from the calculation, profits from investments, which might rise or fall for causes wholly unconnected with the trade and as a consequence to exclude from the capital the investments themselves. But whatever the reason, the statutes are clear that investments, except in the special cases referred to in the rules, are not to count as capital. Though the provisions relating to investments have been somewhat expanded in the Finance (No. 2) Act of 1939 and, following it, in the Indian Excess Profits Tax Act, 1940, the essential scheme remains the same; for Rule 3 of Schedule II of the Indian Act (following Rule 3 of Schedule II of the English Act) provides that any investments, the income from which is by virtue of the provisions of Schedule I, not to be taken into account in computing the profits of the business shall be left out of account in computing the amount of capital; and Rule 4 of Schedule I (Rule 6 of Schedule I of the English Act) provides that income from investments shall be included only in certain specified cases and not otherwise. The recent Acts have added a further provision that all moneys not required for the purpose of the trade or business shall also be left out of account.

Meaning of 'investment'.—Though the Acts provide for the exclusion of investments from capital, and of income from investments from profits, the term 'investment' has not been defined anywhere in the Acts.

Referring to the meaning of the expression Lord Sumner said: "It is said that any form of property, into which a trading company puts its money while acting *intra vires*, is to it an investment of that money, and so, if the word "investments" is an unqualified word in computing the appropriate datum for Excess Profits Duty, nothing would ever be "capital" except unexpended cash. It may equally be said on the other hand that, in the case of such a company, no property is ever purchased except for the purpose of furthering its business, and, therefore, everything it owns, as the result at any rate of purchases with its money, would to it always be a constituent part of its capital, as well as its unexpended cash. Much depends therefore on the true construction of the word investment in the Rules." (12 Tax Cas. p. 542). The ordinary meaning of the word 'investment' is also discussed by Lord Sterndale, M.R., in 12 Tax Cas. at pp. 524-5. It was strongly argued before the Court of Appeal and the House of Lords in the *Gas Lighting Improvement Co.'s Case* that the word 'investment' was used in the Rules and Schedules in a considerably restricted sense

namely investments in something wholly disconnected from the business, that is, employment of capital otherwise than in the trading operations for which the business was constituted, that is to say, capital that is invested outside such operations with the object of obtaining a return thereon either by way of income or capital appreciation independently of the result of such operations.

SCRUTTON, L.J., said: "I cannot see why it should be thought that it was necessary for the Parliament to say that you were not to bring into the profits of a trade or business investments which have nothing to do with it."

LORD CAVE said: "The expression cannot be intended to apply to investments wholly unconnected with the business to be assessed: for investments of that character could in no case be regarded as capital of the business and it would be quite unnecessary to direct their exclusion. It must therefore refer to investments connected with the business."

LORD FINLAY said that the Rule (Rule 8) would be meaningless if it was intended to apply only to income which formed no part of the profits of the business as such income would be already outside the scope of the Excess Profits Duty, and the rule includes within its operation cases in which the money from which the income was derived was employed in the business of the company.

LORD SUMNER said: "It is true that the words 'invest' and 'investment' are often used loosely for the act of buying and for the thing bought, whatever it be, but we have nothing to do with that. Not all investments proper are stocks and shares, though it does not follow that in the case of a trading company not all stocks and shares are investments.....It is an ordinary business term used in its ordinary business sense. It is practically necessary that the sense should be definite, neither enlarged figuratively nor controlled by some notion about the scheme or the policy, if there was one, of this emergency tax. The plain meaning is the true one." : *Commissioners of Inland Revenue v. Gas Lighting Improvement Co. Ltd.* (12 Tax Cas. 501).

Investments: motive of investor.—In determining whether an investment is to be excluded from capital or not the motive of the person in making the investment, is immaterial. In the *Gas Lighting Co.'s Case* (12 Tax Cas. at p. 503), Lord Sumner said: the truth is that these investments were made, as I suppose all good traders' investments are made, with a sound business motive. They may well have been forced on the appellant by circumstances, which they could not otherwise deal with and the prospects of dividends may have had little to do with the matter, but a new substantive in a statute does not take its colour, like a chameleon from such surroundings as the motives of the persons, whose property it correctly describes." If an investment is an investment in the ordinary sense of the word it would not come in merely because it is made with the motive and for the purpose of benefitting the business which is carried on by the investor: Per Lord Sterndale in (12 Tax Cas. at p. 525-6).

Investment or capital: a question of mixed fact and law.—In the *Gas Lighting Improvement Co.'s Case* (12 Tax Cas. 503) the question was whether certain amounts paid by a company on the shares and debentures in two other companies with whom they had entered into a contract for supply of oil on advantageous terms, were or were not to be counted as part of the capital of the former company. The Commissioners of Inland Revenue took the view that these shares and debentures were investments within the meaning of Rule 8 of Part I of the 4th Schedule to the Finance (No. 2) Act of 1915. Sankey, J., considered the finding of the Commissioners as a finding of pure fact, and, holding that there was some evidence upon which the Commissioners could come to that conclusion, declined to interfere. On appeal the Court of Appeal (Lord Sterndale, M. R., Scrutton and Younger, L.JJ.) took a different view. They held, that the question was one of mixed law and fact and was accordingly open to review by the Court. In the House of Lords, Lord Cave said: "I feel no doubt that the point is appealable. If the finding of the Commissioners for General Purposes were indeed one of pure fact, then it could not be revised except on the ground that there was no evidence upon which they could as reasonable men have come to their conclusion. But the finding involves not only a conclusion of fact but the construction of the statute. It is a finding of mixed law and fact, and as such is open to review by the Courts." (12 Tax Cas. at p. 533). Lord Sumner said "the finding that the money employed in the foreign companies was employed in the business of the company as capital and not as an investment within the meaning of Finance (No. 2) Act of 1915 was a conclusion of law. The really material part of the finding was that the money was not employed as an investment within the statutory words and this is in my view a matter of law. The whole case is therefore open to consideration": (p. 541). Lord Phillimore also observed that the matter involved a question of consideration of the statute and was therefore one of mixed law and fact (p. 544).

Investment or capital: method of approach: words of caution.—In *Gas Lighting Improvement Co.'s Case* (12 Tax Cas. 503) Lord Sterndale, M.R., pointed out that when the Commissioners come to a finding that a sum of money is capital employed in the business and not an investment or *vice versa*. "We have not to consider whether we think that the contention of the respondent (tax payer) may have a foundation in good sense, or in business or in accounting, we have not to decide whether such an investment as this ought or ought not to be included in the capital of the business; and, we have not to consider whether it would or would not have been right, in the enactments, to have so framed them that an investment which is made for the purpose of being utilised in the business would be an investment outside the provisions of the enactment. We have nothing to do with any of those considerations. All we have to see is whether according to the words of the Act and the Schedule the decision is one at which the Commissioners could arrive": *Gas Lighting Improvement Co.'s Case* (12 Tax Cas. 503).

Scrutton, L. J., has also uttered similar words of caution: "One has to be quite clear, when dealing with this and similar cases that we are not here to legislate: we are not here to settle what is fair and reasonable; we are not here to explain what is the business meaning of capital or profits. We are here to administer an extremely artificial and conventional system laid down by the wisdom of the Legislature": [*Ibid.*, p. 526].

Investments: Leading Cases: Gas Lighting Improvement Co's Case ([1923] A.C. 723).—The Gas Lighting Improvement Co., which carried on the business of refining and distributing petroleum and petroleum products had a distributing business in Belgium. There were two competing firms in Belgium and a new company was formed in Belgium to carry on distribution in which these two firms and the Gas Lighting Improvement Co. took an equal number of shares. Having difficulty in obtaining petroleum, they agreed also to take shares and debentures in two Roumanian oil companies upon terms that they should have a call on all the crude oil at the disposal of those companies at market prices. In assessing the Gas Lighting Improvement Co. for excess profits duty under the Finance (No. 2) Act of 1915 the question arose whether for that purpose the amounts paid on the shares in the Belgium company and on the shares and debentures in the two Roumanian companies were or were not to be counted as part of the capital. Commissioners of Inland Revenue took the view that these shares and debentures were investments within the meaning of the Rules and accordingly were to be deducted in computing the amount of capital. The Special Commissioners reversed this finding but stated a special case. Sankey, J., took the finding of the Special Commissioners as one of fact and upheld it. The Court of Appeal (Lord Sterndale, M.R., Scrutton and Younger, J.J.) unanimously held that the question was one of mixed law and fact as it involved a construction of the statute and rules and that the holdings in question were investments within the meaning of Rule 8 and should be deducted from the company's capital. The main argument was that 'investments' was used in the rules in the restricted sense of investments unconnected with the business but this argument was repelled unanimously by the Court of Appeal. The House of Lords confirmed the decision of the Court of Appeal. The points laid down in the case and the important passages in the judgments have been considered already.

Liberty & Co., Ltd v. Commissioners of Inland Revenue [1924] (12 Tax Cas. 630).—A company had before the war entered into agreements for rebuilding and extension of their business premises. Owing to the outbreak of the war the work was delayed. In the meantime the company had deposited certain War Loan holdings as security for the performance of one of the agreements, and had purchased considerable amounts of other British Government securities out of reserves made from its profits in anticipation of the expenditure to be made under the agreements. The Commissioners of Inland Revenue and Special Commissioners on appeal treated the War Loan and the other securities as 'investments' and excluded them from the capital employed

in the business and did not take into account the income derived therefrom in computing the profits. Their decision was confirmed by Rowlatt, J., and the Court of Appeal. Rowlatt, J., said: 'It is clear and common ground that there are three alternatives in a case like this. A fund may be either not capital employed in the business at all; a thing apart—as to that no difficulty arises—or it may be employed in the business, but an investment, in which case although it is capital employed in the business the specific mention of the investment takes it out of this computation, or it may be capital employed in the business simpliciter, not an investment, and therefore, of course, comes in...It is to be observed that capital employed in the business and investments are not mutually exclusive terms, because, as I have already pointed out, it may be capital employed in the business and yet an investment'. Coming to the facts of the case the learned Judge said: 'I think the money that was put into this fund, put on deposit to await a building scheme, and for the security of the other party to the 'building' scheme, was not yet, while it remained in that position capital employed in the business; and as to the rest of the fund it was simply there because they thought, and thought with good reason, that they would want to extend their premises in the near future and was not tied up in any sort of way'....Supposing that it was capital employed in the business, he said, there was a finding that these were investments and it was difficult to see how this conclusion could be avoided. In the Court of Appeal, Pollock, M. R., applying the decision of the House of Lords in the *Gas Lighting Improvement Co.'s Case* that the word 'investment' is to be taken in its ordinary sense as being an investment whether it be or be not connected with the business that is carried on by the investor, held that though there was no intention on the part of the company to put the money wholly aside but only take it out of the bank to keep it away in a safe place so that they may realise it as and when they required it, it was still an investment within the meaning of the rules. Warrington, L.J., and Sargant, L.J., agreed with this view.

Recent cases—Certain employees of the Rolls Royce company discovered an alloy. The company took out a patent and granted a license to another company for manufacturing the alloy and the Rolls Royce company agreed to purchase the alloy so manufactured. It was held that the royalties received by the Rolls Royce company was income from an investment though the investment was made to forward the company's business. The grant of the license was held to be distinct from the purchase of alloy: *Commissioners of Inland Revenue v. Rolls Royce Ltd.* [1941] (58 T.L.R. 73). The case of *Commissioners of Inland Revenue v. Anglo American Asphalt Co. Ltd.*, however shows that income from a license may in some cases be an inseparable part of a trading agreement.

Temporary investment in War Loan etc.—A firm of drapers had entered into certain heavy commitments for the purchase of goods under forward contracts and had liabilities under contracts for the extension

of their premises and found it necessary to hold a considerable amount of liquid assets. They had accordingly invested considerable amounts in 1916, 1917 and 1918, in the War loan. Those were not however realised or otherwise used in connection with their business during the years or up to the year of assessment. The Commissioners of Inland Revenue and the Special Commissioners treated the holding in the War Loan not as capital employed in the business but as investments even though the holdings were intended to be realised when occasion should arise with the object of employing the proceeds in the business. The King's Bench upheld this decision. Sankey, J., said referring to the finding of the Special Commissioners "Now I read that to mean this that during this particular period this War Loan was not in fact used, it was not realised, it was not used as part of the capital and was in fact no part of the capital; and bearing in mind the sections of the Act and bearing in mind Part III of the Fourth Schedule, I think that is a determination of fact which really concludes the matter." On the question whether income from the War Loan was income derived from an investment within the meaning of Rule 8 of Part I of the Fourth Schedule to the Finance (No. 2) Act of 1915, and as to what an 'investment' within the clause means he said: 'I am not at all sure whether Mr. Lutter is right in saying that the meaning of the word 'investment' in that paragraph ought to be restricted and narrowed down to something in the nature of a paramount investment.....Now I do not think it is necessary to decide the exact meaning of the word investment. I can conceive of certain senses of the use of the word 'investment' where perhaps it would be decided under Rule 8 that a certain transaction was not an investment or was an investment within the meaning of Rule 8 of Part I of the Schedule. For example, one would have to consider very carefully where there was, if there could be, an investment of a sum of money in a man's own business. I do not like to hazard an opinion that in all cases money placed in War Loan would be an investment. I think you have to consider the facts of the case': *Bourne and Hollingsworth v Commissioners of Inland Revenue* [1921] (12 Tax Cas. 483).

In the connected case of *Lincoln Wagon and Engine Co., Ltd. v. Commissioners of Inland Revenue* [1921] (12 Tax Cas. 494) the nature of investments in War Loans was in question. The volume of business of a company selling railway wagons suddenly decreased owing to certain Government restrictions and the company with accumulated money in its hands purchased War Loan and Treasury Bills. The company contended that these were securities intended to be soon realised for further purchases and the money invested must be treated as capital employed in the business and not as investments. Sankey, J., following his decision in the draper's case, held that the question was one of fact and there was evidence upon which the Commissioners could find that the sums were not capital but investments.

War Loans : Official circulars.—In the United Kingdom the Government had issued certain circulars in 1919 to remove possible misapprehensions about the effect of subscription to the War Loan

and War Bonds, on the liability to excess profits duty. These circulars are printed at pp. 635-637 of 12 Tax Cases.

The case of *Liberty & Co., Ltd.*, shows however, that such official circulars are ineffective and will not be considered by the courts even as creating an estoppel against the Crown in favour of tax payers who had invested on the faith of such circulars or as showing the motive of the investor: *Per Rowlatt, J.*, (12 Tax Cas. p. 638). In the Court of Appeal, Pollock, M. R., went even further and said that if they are of any weight or value at all, they are of weight or value only as evidence before the Commissioners and should not have been attached to the case presented to the Courts: (12 Tax Cas. p. 640).

Investments of insurance companies.—An insurance company whose paid up capital was £20,000 had reserve fund investments to the extent of £25,968 in addition to the statutory deposit of £20,000 which was invested. It was held, that the investments of its reserve funds could not be treated as capital employed in its business: *Irish Catholic Church Property Insurance Co., Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 13). The law is now different and is governed by the provisions of R. 4 (2) of Sch. II. See *infra*.

Investment companies—The paid up capital of an insurance company was £20,000 and its total reserve fund in investments was £25,968 in addition to the statutory deposit of £20,000 but it appeared that the total risks insured by the company exceeded £12,000,000; it was held that the company was not one whose principal business consisted in making investments: *Irish Catholic Church Property Insurance Co., Ltd. v. Commissioners of Inland Revenue* (12 Tax Cas. 13).

Investment companies: principal business, a question of fact.—Whether the business of a company consists wholly or mainly in the dealing in or holding of investments is a question of fact. In *The Lincoln Wagon and Engine Co. v. Commissioners of Inland Revenue* (12 Tax Cas. 494) a company dealing in railway wagons, owing to a decrease in the volume of its business had to put in most of its accumulated money in War Loans and Treasury Bills with the intention of realising them when required for new purchases. They contended that the principal business of the company was holding of investments. Sankey, J., said this was a question of fact for the Commissioners and upheld the finding of the Special Commissioners that it was not such a company.

4. Notwithstanding anything contained in Rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business:

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

Shipping business.—This rule lays down an exception to the general rule laid down in rule 3 about investments and moneys not required for the business. The position of shipping industry, particularly of Indian shipping industry is of great importance during the war. Ships are requisitioned for war services and if they are lost it would be difficult to replace them. The cost of replacement would also be higher and reserves for depreciation may not be utilised for replacement of old ships. It was therefore considered essential that funds lying with shipping companies either as cash or as investments being the proceeds of the sales, or the amount of compensation for losses of ships or the accumulation of the amounts of depreciation should be treated as capital employed in the business, and this rule was introduced accordingly by the Indian Legislature: See *Legislative Assembly Debates*.

The three items which would be included under this rule in the capital employed in the business are:

- (i) sale proceeds of any tonnage sold;
- (ii) amount of compensation received in respect of loss of ships, and
- (iii) the amount of accumulation of reserves.

These would be included whether they are invested or not. This rule has its necessary corollary that the income received from such investments would be included in computing the profits of the business.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

(a) to have accrued at an even rate throughout the period; and

(b) to have resulted, as they accrued, in a corresponding increase, or decrease, as the case may be, in the capital employed in the business.

Accrual of profits and losses —This rule corresponds to Rule 4 of Part II of the Seventh Schedule to the Finance (No. 2) Act of 1939 and lays down with regard to profits and losses made in a period that they shall be deemed (i) to have accrued at an even rate throughout that period and (ii) to have resulted in a corresponding increase or decrease in the capital employed. This rule is only a presumption and is to be applied only if the contrary is not shown.

Law as to accumulated profits.—The Finance (No. 2) Act of 1915 provided (see Sch. IV, Part III, para 1, proviso) that nothing in that part shall prevent accumulated profits employed in the business being treated as capital. The Finance Act of 1916 however provided (Sec. 52)

that 'for the purposes of excess profits duty, the profits of any trade or business arising and accumulating during any accounting period, are not during that period, to be treated as accumulated profits within the meaning of Part III of the 4th Schedule to the principal Act, or as capital employed in the business.'

The Finance (No. 2) Act of 1939 has enacted that profits and losses shall be deemed to have accrued at an even rate and definitely provides further that they shall be deemed to have resulted in a corresponding increase or decrease in the capital employed unless the contrary is shown. The Indian Act of 1940 has followed the English Act of 1939.

6. Where, in accordance with the second or third* proviso to Section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

Non-residents and persons not ordinarily resident.—The Finance (No. 2) Act of 1939 does not contain a rule corresponding to this rule of the Indian Act. This rule deals with cases where under the second proviso to Sec. 5 of the Indian Act the Act is applicable to part only of a business. Under Sec. 5, second proviso, where the profits of part only of a business carried on by a *non-resident* or a *person not ordinarily resident* accrue or arise in British India, then the Act shall apply only to such part of the business and such part shall be deemed to be a separate business (subject to an exception in the case of businesses of persons not ordinarily resident controlled in India). The effect of this rule is that capital of the part of the business to which the Act applies, and which accordingly is to be treated as a separate business for the purposes of the Act, shall be computed separately, and all references to capital employed in the business shall be treated as references to capital employed in that part of the business. This seems to be a necessary and clear result of the second proviso to Section 5 and the rule is inserted for abundant caution.

†7. (1) If—

(a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

(b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

* Added by E.P.T. (Second Amendment) Act of 1941.

† This rule was added by the Amendment Act of 1940,

then, in computing the average amount of the capital employed in the business in the standard period, and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of Section 6, or of the Central Board of Revenue under sub-section (1) of Section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of Section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.

Inherently unproductive assets.—This rule was added by the Excess Profits Tax (Amendment) Act of 1940 and provides for allowance being made in the case of assets which were inherently unproductive in the standard period but which became productive in a chargeable accounting period. The following points may be noted with regard to this rule :

(i) that it applies only to cases where standard profits are computed with reference to profits of the standard period ;

(ii) it refers to assets which were inherently unproductive in the standard period or any part thereof ;

(iii) in such a case in computing the average amount of capital employed *in the standard period and in all chargeable accounting periods* those assets and any other assets shall be treated as not having been assets during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive ;

(iv) where standard profits are determined as directed under Section 6 (3) by the Board of Referees or Section 26 (1) by the Central Board of Revenue, the rule will apply only to such extent as the Central Board of Revenue think proper ;

(v) applications in this behalf should be made to the Central Board through the Excess Profits Tax Officer before the expiry of the period mentioned in the notice for return under Section 13 (1);

(vi) when the rule has been applied, computation of capital made before the making of the application and assessments affected by that computation would be revised. The expression "inherently unproductive" is somewhat vague but it is a question of fact whether assets were inherently unproductive.

SCHEDULE III.

[See Section 9 (7).]

Rules for determining the amount of capital held by a company through other companies.

Object of the Schedule --Section 6, sub-sec. (5), of the Act provides that a company shall be deemed to be a subsidiary of another company if not less than nine-tenths of the ordinary share capital of it is owned by that other company and sub-sec. (7) provides that the amount of ordinary share capital of one company owned by a second company through another company or companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule. The rules in that behalf are accordingly given in this Schedule. The Schedule is based entirely on Part I of the 4th Schedule to the Finance Act of 1938 (relating to national defence contribution) which was adopted bodily for purposes of excess profits tax by Section 17 (6) of the Finance (No. 2) Act of 1939. These rules were altered in the United Kingdom by the Finance Act of 1940 but the Indian Act has retained the provisions of the Schedule.

Summary of the Rules.—A brief summary of the rules is given below :

Rule 1.—The purport of this rule may be shortly put thus : If A owns ordinary share capital in B, and B in C, then A shall be deemed to own share capital of C through B ; and if C owns in D, A shall be deemed to own share capital in D through B and C, and B shall be deemed similarly to own share capital of D through C.

Rule 2.—Where A owns in B, B in C, C in D, and D in E, any three or more of these, *i.e.*, A, B & C ; B, C & D ; C, D & E or A, B, C, D ; B, C, D, E ; or A, B, C, D & E are referred to as 'a series.' The first of each series is 'the first owner' and the last, 'the last owner' and the middle ones, if one only is called an 'intermediary' and if more than one 'a chain of intermediaries'. A company which directly owns shares in another is called an 'owner'.

Rule 3 —If A owns all the ordinary share capital in B, B all the ordinary share capital of C, and C all the ordinary share capital of D, A owns the whole of the ordinary share capital of D through the chain of intermediaries B and C.

Rule 4.—If one of these companies, A, B or C owns only a fraction in the ordinary share capital of the next, A owns only that fraction of the share capital in D.

Rule 5.—(a) If more than one of these companies own only a fraction in the next, *e.g.*, if A owns $\frac{1}{2}$ of the ordinary share capital of B and B owns $\frac{1}{2}$ of that of C, and C owns the whole of that of D, A owns $\frac{1}{2} \times \frac{1}{2}$, *i.e.*, $\frac{1}{4}$ the ordinary share capital of D.

(b) If A owns $\frac{1}{2}$ of B, B owns $\frac{1}{2}$ of C and C owns $\frac{1}{2}$ D, A owns only $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$, *i.e.*, $\frac{1}{8}$ of D.

Rule 6.—This rule deals with the complicated case where A owns a fraction of the ordinary share capital in D through B and C, and also owns another fraction in the ordinary share capital of D directly or through an intermediary or intermediaries which are not members of the series. A in such cases will be deemed to own the aggregate sum of those fractions.

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In this Schedule—

(a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;

(b) in any series—

(i) that company which owns ordinary share capital of another through the remainder is referred to as “the first owner”;

(ii) that other company the ordinary share capital of which is so owned is referred to as “the last owned company”;

(iii) the remainder, if one only, is referred to as an “intermediary” or, if more than one, is referred to as a “chain of intermediaries”;

(c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “owner”

(d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where—

(a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related; or

(b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

(a) directly; or

(b) through any intermediary or intermediaries which is not a member or are not members of that series; or

(c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or

(d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

THE INDIAN FINANCE ACT, 1940

(ACT No. XVI OF 1940).

(Received the assent of the Governor-General on the 6th April 1940).

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Income-tax and
super-tax.

7. (1) Subject to the provisions of sub-section (2)—

(a) income-tax for the year beginning on the 1st day of April, 1940, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939.

(b) rates of super-tax for the year beginning on the 1st day of April, 1940, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939 :¹

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be :—

(1) On the first Rs. 25,000 of total income.....Nil.

(2) On the balance of total income.....one anna in the rupee.

(2) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates imposed by sub-section (1).

(3) For the purpose of this section and of the rates of tax imposed by sub-section (1), the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

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¹ Parts I and II of Schedule II to the Indian Finance Act, 1939, referred to above, are printed below :—

SCHEDULE II:

[See Section 6].

PART I.

RATES OF INCOME-TAX

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate.
1. On the first Rs. 1,500 of total income	... Nil.
2. On the next Rs. 3,500 of total income	... Nine pies in the rupee.
3. On the next Rs. 8,000 of total income	... One anna and three pies in the rupee.
4. On the next Rs. 5,000 of total income	... Two annas in the rupee.
5. On the balance of total income	... Two annas and six pies in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B. In the case of every company and local authority, and in every case in which, under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.
On the whole of total income	... Two annas and six pies in the rupee.

PART II.

RATES OF SUPER-TAX.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B of this Part applies—

	Rate.
1. On the first Rs. 25,000 of total income	... Nil.
2. On the next Rs. 10,000 of total income	One anna in the rupee.
3. On the next Rs. 20,000 of total income	Two annas in the rupee.
4. On the next Rs. 70,000 of total income	Three annas in the rupee.
5. On the next Rs. 75,000 of total income	Four annas in the rupee.
6. On the next Rs. 1,50,000 of total income	Five annas in the rupee.
7. On the next Rs. 1,50,000 of total income	Six annas in the rupee.
8. On the balance of total income	Seven annas in the rupee.

B. In the case of every company and local authority—

	Rate.
On the whole of total income	... One anna in the rupee.

THE INDIAN FINANCE (No. 2) ACT, 1940.

(Received the assent of the Governor-General on the 29th November, 1940).

* * * *

3. (1) Subject to the provisions of this section, the rates of income-tax and tax, and the rates of super-tax other than super-tax payable by a company, imposed by sub-section (1) of Section 7 of the Indian Finance Act, 1940, shall in respect of the year beginning on the 1st day of April, 1940, be increased by a surcharge for the purposes of the Central Government amounting to one-twelfth of each such rate, and the rate of super-tax payable by a company imposed by the said sub-section shall in respect of the same year be increased by one-twelfth.

(2) In making any assessment for the year ending on the 31st day of March, 1941,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities," or any income from dividends in

respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) For the purposes of the proviso to sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the amount by which any deduction made under that sub-section by a person responsible for paying any income chargeable under the head "Salaries" falls short of the deduction which could have been made had the rates imposed by this Act then been in force shall be deemed to be a deficiency arising out of a previous deduction or failure to deduct.

(4) Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under Section 23 of the Indian Income-tax Act, 1922, he may proceed to determine the further sum payable by such assessee by virtue of sub-section (1) of this section, and such further sum shall for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under Section 23 of that Act.

THE INDIAN FINANCE ACT, 1941.

(ACT No. VII of 1941).'

*(Received the assent of the Governor-General on the
31st March 1941.)*

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Income-tax and super-tax. 7. (1) Subject to the provisions of sub-sections (2) and (3)—

(a) income-tax for the year beginning on the 1st day of April, 1941, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939, increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate;

(b) rates of super-tax for the year beginning on the 1st day of April, 1941, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939, increased—

(i) in the case of the rate applicable to a company, by a surcharge amounting to one-third of that rate, and

(ii) in the case of every other rate, by a surcharge for the purposes of the Central Government amounting to one-third of each such rate :

Provided that in the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1941, shall be the rates of super-tax specified in the proviso to clause (b) of sub-section (1) of Section 7 of the Indian Finance Act, 1940, increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate.

(2) In making any assessment for the year ending on the 31st day of March, 1942,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (1) of Section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (1) of Section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-section (2) of this section where applicable.

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

8. (1) In sub-clause (a) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March 1941," the words and figures "31st day of March 1942," shall be substituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1941, be an amount equal to sixty six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

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THE INDIAN FINANCE ACT, 1942.

ACT No. XII OF 1942.

(Received the assent of the Governor-General on the 26th March 1942.)

Short title and extent. 1. (1) This Act may be called the Indian Finance Act, 1942.

(2) It extends to the whole of British India.¹

* * * *

Income-tax and super-tax. 8. (1) Subject to the provisions of sub-sections (2) and (3),—

(a) income-tax for the year beginning on the 1st day of April, 1942, shall be charged at the rates specified in part I of Schedule II increased in the cases to which sub-paragraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1942, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1943,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the

1. Extended to British Baluchistan by Notification No. 51F dated the 7th April 1942.

head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-section (2) of this section where applicable.

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) no tax shall be payable in cases to which sub-paragraph (a) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this sub-section an amount representing not less than one rupee for every complete unit of twenty-five rupees by which his total income exceeds seven hundred and fifty rupees:

Provided that where the total income includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the amount to be deposited by the assessee in order to obtain the exemption conferred by this sub-section shall be an amount bearing to the minimum required to be deposited under the foregoing provisions of this sub-section the same proportion as the amount of his total income diminished by the amount of such inclusions bears to the amount of his total income.

(6) A deposit made in accordance with the provisions of sub-section (5) shall not in any way be capable of being charged and shall

not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on any such deposit.

(7) Where the total income of an assessee referred to in subparagraph (b) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the deductions, if any, allowed under the second proviso to sub-section (1) of Section 7, Section 15 and sub-section (1) of Section 58F of the Indian Income-tax Act, 1922, shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix :

Provided that nothing in this sub-section shall apply to any part of total income to which clause (a) of sub-section (2) applies.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

9. (1) In sub-clause (a) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1942" the words and figures "31st day of March, 1943" shall be substituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1942, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

10. (1) If before the 1st day of July, 1942, or within thirty days of the date on which any excess profits tax, charged under the provisions of the Excess Profits Tax Act, 1940, at the rate of sixty-six and two-thirds per cent. becomes payable, whichever of these dates is later, a further sum not exceeding one-fifth of the amount of the said excess profits tax is deposited with the Central Government, the Central Government shall repay, at such date and subject to such conditions as it may hereafter determine, so much of the said excess profits tax as shall be equal to one-tenth of the amount thereof or to one-half of such further sum deposited, whichever is the less :

Provided that, if the said excess profits tax is thereafter reduced, whether by relief given in respect of a deficiency of profits, or by relief given in respect of double excess profits taxation or otherwise, and whether by refund or otherwise, the portion of the tax to be repaid under this section shall be correspondingly reduced :

Provided further that if the said excess profits tax is so reduced, the maximum sum that may be deposited with the Central Government under this section shall also be correspondingly reduced :

Provided further that the provisions of this section shall apply in respect of excess profits tax to which the section applies which became payable before the commencement of this Act if the further sum referred to herein is deposited before the 1st day of July, 1942 :

Provided further that in relation to excess profits tax payable under the Excess Profits Tax Act, 1940, in respect of any profits which are also liable to assessment to excess profits tax under the law in force in the United Kingdom it shall be unnecessary to deposit the further sum referred to in this section, and the amount repayable by the Central Government under this section shall, subject to the first proviso be one-tenth of the amount of the excess profits tax payable at the rate of sixty-six and two-thirds per cent. under the Excess Profits Tax Act, 1940:

¹ [Provided further that in respect of chargeable accounting periods ending after the 31st day of December, 1943, the amount repayable under this sub-section shall, subject to the provisions of the first of the foregoing provisos, be calculated by reference to the amount of the excess profits tax paid, and not by reference to the further amount deposited under this section.]

(2) Any sum deposited with the Central Government under sub-section (1) shall carry simple interest at the rate of two per cent. per annum and shall be repaid within twelve months of the date of termination of the present hostilities.

(3) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this section and for prescribing the manner and conditions referred to in sub-section (5) of Section 8. * * *

SCHEDULE II.

(See Section 8.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies:—

(a) Where the total income does not exceed Rs. 2,000—

	Rate.
1. On the first Rs. 750 of total income	Nil
2. On the next Rs. 1,250 of total income	Six ples in the rupee.
Provided that no tax shall be payable on a total income which does not exceed Rs. 1,500	

(b) Where the total income exceeds Rs. 2,000—

	Rate.	Surcharge
1. On the first Rs. 1,500 of total income	Nil.	Nil.
2. On the next Rs. 8,500 of total income	Nine ples in the rupee.	Six ples in the rupee.

¹. This proviso was added by the Indian Finance Act, 1944.

- | | | |
|--|---------------------------------------|---------------------------------------|
| 3. On the next Rs. 5,000 of total income | One anna and three pies in the rupee. | Nine pies in the rupee. |
| 4. On the next Rs. 5,000 of total income | Two annas in the rupee. | One anna and two pies in the rupee. |
| 5. On the balance of total income | Two annas and six pies in the rupee. | One anna and three pies in the rupee. |

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, Income-tax is to be charged at the maximum rate—

	Rate	Surcharge.
On the whole of total income	Two annas and six pies in the rupee.	One anna and three pies in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B and C of this Part apply—

	Rate.	Surcharge
1. On the first Rs. 25,000 of total income	Nil	Nil
2. On the next Rs. 10,000 of total income	One anna in the rupee.	Six pies in the rupee.
3. On the next Rs. 20,000 of total income	Two annas in the rupee.	One anna in the rupee.
4. On the next Rs. 70,000 of total income	Three annas in the rupee.	One anna and six pies in the rupee.
5. On the next Rs. 75,000 of total income	Four annas in the rupee.	Two annas in the rupee.
6. On the next Rs. 1,50,000 of total income	Five annas in the rupee.	Two annas and six pies in the rupee.
7. On the next Rs. 1,50,000 of total income.	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income.	Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income.	One anna in the rupee.	Six pies in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the Registration of Co-operative Societies—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income.	Nil.	Nil.
2. On the balance of total income.	One anna in the rupee.	Six pies in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income.	One anna and six pies in the rupee.

THE INDIAN FINANCE ACT, 1943.

(Act VIII of 1943).

[Received the assent of the Governor-General on the 29th March, 1943.]

Short title and extent. 1. (1) This Act may be called the Indian Finance Act, 1943.

(2) It extends to the whole of British India.

Income-tax and super-tax. 5. (1) Subject to the provisions of sub-sections (2) and (3),—

(a) income-tax for the year beginning on the 1st day of April 1943, shall be charged at the rates specified in Part I of Schedule II increased in the cases to which sub-paragraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income tax, and

(b) rates of super tax for the year beginning on the 1st day of April, 1943, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1944,—

(a) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-section (2) of this section where applicable.

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income tax Act, 1922.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) no tax shall be payable in cases to which sub-paragraph (a) of Paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this sub-section an amount representing not less than one rupee for every complete unit of twenty-five rupees by which his total income exceeds seven hundred and fifty rupees.

(6) A deposit made in accordance with the provisions of sub-section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such deposit.

(7) Where the total income of an assessee referred to in sub-paragraph (b) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix.

Explanation—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) Notwithstanding anything contained in sub-section (7) of Section 8 of the Income Finance Act, 1942, the amount to be funded under that sub-section for the assessee's benefit in respect of any assessment for the year ending on the 31st day of March, 1943, shall be calculated on his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder.

(9) The Central Government may, by notification in the official Gazette, make rules prescribing the manner and conditions referred to in sub-section (5).

Continuance of
and rate of excess
profits tax.

6. (1) In sub-clause (a) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1943" the words and figures "31st day of March, 1944" shall be substituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1943, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

SCHEDULE II.

(See Section 5.)

Rates of Income-tax.

PART I.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies:—

(a) Where the total income does not exceed Rs. 2,000—

	Rate.
1. On the first Rs. 750 of total income	Nil.
2. On the next Rs. 1,250 of total income	Six pies in the rupee.
Provided that no tax shall be payable on a total income which does not exceed Rs. 1,500.	

(b) Where the total income exceeds Rs. 2,000—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income	Nil.	Nil.
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.	Six pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and three pies in the rupee.	Ten pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee.	One anna and four pies in the rupee.
5. On the balance of total income	Two annas and six pies in the rupee.	One anna and eight pies in the rupee.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income	Two annas and six pies in the rupee.	One anna and eight pies in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income.	Nil.	Nil.
2. On the next Rs. 10,000 of total income	One anna in the rupee.	One anna in the rupee.
3. On the next Rs. 20,000 of total income.	Two annas in the rupee.	One anna and six pies in the rupee.
4. On the next Rs. 70,000 of total income.	Three annas in the rupee.	Two annas in the rupee.
5. On the next Rs. 75,000 of total income.	Four annas in the rupee.	Two annas and six pies in the rupee.
6. On the next Rs. 1,50,000 of total income.	Five annas in the rupee.	Three annas in the rupee.
7. On the next Rs. 1,50,00 of total income.	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income.	Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income.	One anna in the rupee.	One anna in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay

Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate	Surcharge
1. On the first Rs. 25,000 of total income.	Nil.	Nil.
2. On the balance of total income.	One anna in the rupee.	One anna in the rupee

D.—In the case of every company—

	Rate.
On the whole of total income.	Two annas in the rupee.

THE INDIAN FINANCE ACT, 1944

(Act No. XII of 1944).

(Received the assent of the Governor-General on 31st March, 1944).

The following Act has been assented to by the Governor-General under the provisions of clause (b) of sub-section (1) of Section 67B of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, and has been expressed to be made by the Governor-General under the provisions of sub-section (2) of the section.

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1944.

Whereas it is expedient to fix the duty on salt manufactured in, or imported by land into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898 (VI of 1898), to continue for a further period of one year the additional duties of customs imposed by Section 6 of the Indian Finance Act, 1942 (XII of 1942), and to increase certain of those duties, to alter the duty of excise on tobacco and to impose duties of excise on betel-nuts, coffee and tea, to fix rates of income-tax and super-tax, and to continue the charge and levy of excess profits tax and make certain additional provisions relating thereto;

It is hereby enacted as follows:—

1. *Short title and extent.*—(1) This Act may be called the Indian Finance Act, 1944.

(2) It extends to the whole of British India.

6. *Income-tax and super-tax.*—(1) Subject to the provisions of sub-sections (2), (3) and (5),—

(a) income-tax for the year beginning on the 1st day of April, 1944, shall be charged at the rates specified in Part I of the Second Schedule increased in each case by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1944, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 (XI of 1922), be those specified in Part II of the Second Schedule increased in the cases to which paragraphs A, B and C of

that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1945,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922 (XI of 1922), to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1943 (VIII of 1943), on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922 (XI of 1922), the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super tax payable according to the rates applicable under the operation of the Indian Finance Act, 1943 (VIII of 1943), on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) In making any assessment for the year ending on the 31st day of March, 1944, or the year ending on the 31st day of March, 1945,—

(a) where the total income of a company includes any profits and gains from life insurance business the super-tax payable by the company on that part of its total income which consists of such inclusion shall be in the case of an assessment for the first mentioned year at the rate of one anna and one pie in the rupee and in the case of an assessment for the second mentioned year at the rate of nine piés in the rupee;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942 (XII of 1942), on his total income the same proportion as the amount of such inclusion bears to his total income, so, however, that if the aggregate of the taxes so computed in respect of such inclusion exceeds the aggregate of the taxes on the same income payable by a company under the operation of the Indian Finance Act, 1942 (XII of 1942), the taxes payable on such inclusion shall be computed at the rates applicable to a company under the operation of the said Act.

(4) Where any assessment for the year ending on the 31st day of March, 1944, to which clause (a) or (b) of sub-section (3) is applicable

has been completed at the rates of tax in operation under the Indian Finance Act, 1943 (VIII of 1943), it shall be received by the Income-tax Officer in accordance with the provisions of clause (a) or (b), as the case may be, of sub section (3) and the excess tax paid, if any, shall be refunded.

(5) In cases to which Section 17 of the Indian Income-tax Act, 1922 (XI of 1922), applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-sections (2) and (3) of this section where applicable.

(6) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922).

(7) Where the total income of an assessee referred to in paragraph A of Part I of the Second Schedule does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) The provisions of Section 23A of the Indian Income-tax Act, 1922 (XI of 1922), shall not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1945.

7. *Continuance of and rate of excess profits tax.*—(1) In sub-clause (a) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940 (XV of 1940), for the words and figures "31st day of March, 1944," the words and figures "31st day of March, 1945," shall be substituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940 (XV of 1940), shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1944, be an amount equal to sixty-six and two thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

8. *Further provisions respecting excess profits tax.*—(1) In sub-rule (1) of rule 2 of the Second Schedule to the Excess Profits Tax Act, 1940 (XV of 1940),—

(a) for the words "and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted" the following shall be substituted, namely :—

"and in particular there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax, or for advance payments due under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or for any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943)";

(b) after clause (b) of the proviso the following clauses shall be inserted, namely :—

"(c) in the case of any advance payment due under any provision of the Indian Income-tax Act, 1922 (XI of 1922), on the date on which, under the provisions of that section, the payment first became due;

(d) in the case of any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943), on the date on which, under the provisions of that section, the further sum became payable."

(2) To sub-section (1) of Section 10 of the Indian Finance Act, 1942 (XII of 1942), the following proviso shall be added, namely :—

"Provided further that in respect of chargeable accounting periods ending after the 31st day of December, 1943, the amount repayable under this sub-section shall, subject to the provisions of the first of the foregoing provisos, be calculated by reference to the amount of the excess profits tax paid, and not by reference to the further amount deposited under this section."

(3) In Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943),—

(a) to sub-section (1) the following provisos shall be added, namely :—

"Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1943, the provisions of this sub-section shall have effect as if, in relation to any person who is a company, for the words 'one-fifth' the word 'nineteen-sixtyfourths' were substituted and as if, in relation to any other person, for the words 'one-fifth' the words 'seventeen-sixtyfourths' were substituted :

Provided further that if, in respect of any chargeable accounting period ending after the 31st day of December, 1943, a person who has deposited a further sum equal to seventeen-sixtyfourths of the excess profits tax payable shows that the amount of the income-tax and super-tax payable in respect of the excess profits arising in such period exceeds fifteen-sixtyfourths of the amount of the excess profits tax payable, so much of the deposit shall be refunded as will secure that the total of the deposit made and the income-tax and super-tax payable in respect of the excess profits arising in such period does not exceed one-half of the excess profits tax payable."

(b) after sub-section (1) the following sub-section shall be inserted, namely :—

"(1A) In respect of any chargeable accounting period ending after the 31st day of December, 1943, in respect of which a provisional

assessment of excess profits tax is made under Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940), the person liable to pay such excess profits tax shall deposit in the manner laid down in sub-section (1) a further sum equal to nineteen-sixtyfourths of the amount of the said excess profits tax if such person is a company and seventeen-sixtyfourths of the said amount if such person is not a company; and the provisions of sub-sections (6) and (7) of the said Section 14A shall apply to any payment made under this sub-section as they apply to a payment of excess profits tax.”;

(c) in sub-section (4) for the words, brackets and figure “sub-section (1) of this section”, where they occur for the first time, the words, brackets, figures and letter “sub-section (1) or (1A) of this section” shall be substituted.

* * * *

THE SECOND SCHEDULE.

(See Section 6.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies:—

	Rate.	SurchARGE.
1. On the first Rs. 1,500 of total income ...	Nil.	Nil.
2. On the next Rs. 3,500 of total income ...	Nine pies in the rupee.	Six pies in the rupee.
3. On the next Rs. 5,000 of total income ...	One anna and three pies in the rupee.	Ten pies in the rupee.
4. On the next Rs. 5,000 of total income ...	Two annas in the rupee.	One anna and six pies in the rupee.
5. On the balance of total income ...	Two annas and six pies in the rupee.	Two annas in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	SurchARGE.
On the whole of total income ...	Two annas and six pies in the rupee.	Two annas in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	... Nil.	Nil.
2. On the next Rs. 10,000 of total income	... One anna in the rupee.	One anna in the rupee.
3. On the next Rs. 20,000 of total income	... Two annas in the rupee.	Two annas in the rupee.
4. On the next Rs. 70,000 of total income	... Three annas in the rupee.	Two annas and six pies in the rupee.
5. On the next Rs. 75,000 of total income	... Four annas in the rupee.	Three annas in the rupee.
6. On the next Rs. 1,50,000 of total income	... Five annas in the rupee.	Three annas in the rupee.
7. On the next Rs. 1,50,000 of total income	... Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income	... Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income	... One anna in the rupee.	One anna in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	... Nil.	Nil.
2. On the balance of total income	... One anna in the rupee,	One anna in the rupee.

D.—In the case of every company—

	Rate.
On the whole of the total income	... Three annas in the rupee.

Provided that a rebate of one anna in the rupee shall be allowed on the total income as reduced by the amount of any dividend declared in British India in respect of the profits of the previous year for the assessment for the year ending on the 31st day of March, 1945, not being a dividend payable at a fixed rate or a dividend declared on or before the 29th day of February, 1944, by a company to which but for sub-section (8) of Section 6 of this Act, Section 23A of the Indian Income-tax Act, 1922 (XI of 1922), would be applicable.

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AND
STATUTES

RULES AND NOTIFICATIONS.

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EXCESS PROFITS TAX RULES, 1940.

Notification No. 1 dated the 28th September 1940.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue makes the following rules, namely :—

Short title. 1. These Rules may be called the Excess Profits Tax Rules, 1940.

Definitions. 2. In these Rules—

(i) “the Act” means the Excess Profits Tax Act, 1940 (XV of 1940);

(ii) “applied section” means a section of the Indian Income-tax Act, 1922, applied by Section 21 of the Act and rule 3;

(iii) “Form” means a form as set out in the Schedule to these Rules.

3. The provisions of Sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 Indian Income-tax to 63 (inclusive) and 65 to 67A (inclusive) of the Act, 1922. Indian Income-tax Act, 1922, shall apply with the following modifications, namely :—

General Modifications. ¹ [(i) All references to “this Act” except those in the proviso to clause (iii) of sub-section (2) of Section 10, the first proviso to sub-section (1) of Section 42, Section 44A, and in sub-section (1) of Section 54 where they last occur, shall be construed as references to “the Act”.

(ia) All references to “income-tax” except those in the expression “Income-tax practitioner” occurring in sub-section (1) of Section 61, in clause (iv) of sub-section (2) of Section 61 and in sub-clause (a) of clause (iv) of sub-section (2) of Section 61, shall be construed as references to “excess profits tax”.]

Modification of Section 10. (ii) In Section 10 :—
(a) clauses (b) and (c) of the proviso to clause (vi) of sub-section (2) shall be omitted;

(b) for sub-section (7) the following sub-section shall be substituted, namely :—

“(7) Notwithstanding anything to the contrary in this section or in the Excess Profits Tax Act, 1940, the profits of any business of insurance, other than life insurance, shall be computed in accordance with the rules contained in the Schedule to the Indian Income-tax Act, 1922, in so far as they are applicable to such business”.

Modification of Section 13. (ii) In Section 13 the word and figures “and 12” shall be omitted.

Modification of Section 24B. (iv) In Section 24B :—
(a) in sub-section (2)—

(1) the words and figures “before the publication of the notice referred to in sub-section (1) of Section 22 or” shall be omitted, and

(1) Clauses (i) and (ia) were substituted by Notification No. 15 dated the 12th April 1941.

(2) for the words and figures "sub-section (2) of Section 22 or Section 34", wherever they occur the words and figures "sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1940", shall be substituted;

¹ [(3) for the words "total income" the words "excess profits" shall be substituted].

(b) in sub-section (3)—

(1) for the word and figures "Section 22" the words and figures "sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940" shall be substituted; and

(2) for the words and figures "Sections 22 and 23" the words and figures "sub-section (2) of Section 13 of the Excess Profits Tax Act, 1940" shall be substituted.

¹ [(3) for the words "total income" the words "excess profits" shall be substituted].

(v) In Section 37, for the words "this Chapter" the words, figures and brackets "Sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940" shall be substituted.

(vi) For Section 40 the following section shall be substituted, namely:—

"40. In the case of any agent of any person residing out of British India, being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax Act, 1940, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in British India and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct."

(vii) The proviso to sub-section (1) of Section 41 shall be omitted.

(viii) In the first proviso to sub-section (1) of Section 42, the words and figures "the income-tax so chargeable may be recovered by deduction under any of the provisions of Section 18 and that" shall be omitted.

(ix) For Section 44, the following section shall be substituted, namely:—

"44. Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Section 14 of the Excess Profits Tax Act, 1940, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment."

² [(ixa) In Section 44-A, for the words "this chapter" the words and figures "the applied Sections 44-B and 44-C" shall be substituted.]

(1) This paragraph was inserted by Notification No. 15 dated the 12th April 1941.

(2) This clause was inserted by *ibid.*

¹[(x) In Section 44B—

(a) in sub-section (1) for the words "this chapter" the words and figures "the applied Section 44-A" shall be substituted.

(b) in sub-section (3), the words "at the rate for the time being applicable to the total income of a company" shall be omitted.

(xi) In Section 44C—

(a) for the words "this chapter" the words and figures "the applied Sections 44 A and 44-B" shall be substituted.

(b) for the words "of his total income in the previous year" the words "of his actual excess profits in the chargeable accounting period" shall be substituted.

(c) the words "other" shall be omitted.]

(xii) In Section 45—

Modification of (a) the words, brackets, figures and letter "under Section 45. sub-section (3) of Section 23-A or" shall be omitted;

(b) for the words and figures "Section 31 or Section 32 or Section 33", the words and figures "sub-section (4) of Section 17 or Section 18 or Section 19 of the Excess Profits Tax Act, 1940" shall be substituted;

(c) for the words and figures "under Section 30", the words and figures "under Section 17 of the Excess Profits Tax Act, 1940" shall be substituted;

(d) in the proviso, for the words "which is due in respect of the amount of his income which", the words "which relates to excess profits arising from such income as" shall be substituted.

Modification of (xiii) Sub-section (5) of Section 46 shall be Section 46. omitted.

(xiv) In Section 47—

Modification of (a) the words and figures "sub-section (2) of Section 47. Section 25, Section 28, sub-section (6) of Section 44E, sub-section (5) of Section 44F or" shall be omitted;

(b) after the figures "46", the words and figures "or under the provisions of Section 10 or Section 16 of the Excess Profits Tax Act, 1940" shall be inserted;

²[(c) for the words "this Chapter" the words and figures the "applied Sections 45 and 46" shall be substituted.]

(xv) In Section 48—

Modification of (a) for sub-section (1), the following sub-section Section 48. shall be substituted, namely—

"(1) If any person, to whose business the Excess Profits Tax Act, 1940, applies, satisfies the Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said Act for that period, he shall be entitled to a refund of any such excess."

(b) Sub-section (3) shall be omitted.

(1) Clauses (x) and (xi) were substituted by Notification No. 15 dated the 12th April 1941.

(2) This sub-clause was inserted by the same notification.

(c) In sub-section (4), the words, brackets and figures "or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act" shall be omitted.

Modification of Section 49-F. (xvi) In Section 49F, for the word and figures "or 49", the following shall be substituted, namely:—

"or under Section 7 or Section 11 of the Excess Profits Tax Act, 1940."

Modification of Section 50. (xvii) For Section 50, the following section shall be substituted, namely:—

"50. No claim to any refund of tax under the Excess Profits Tax Act, 1940, shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises."

(xviii) In Section 54—
Modification of Section 54. (a) in sub-section (1) for the words "this Chapter", the words and figures "Sections 23, 24 and 25 of the Excess Profits Tax Act, 1940" shall be substituted;

(b) in sub-section (3), clauses (e) and (m) shall be omitted; and in clause (i) for the figures and words "49 of this Act," the figures and words "11 of the Excess Profits Tax Act, 1940" shall be substituted;

(c) sub-section (4) shall be omitted.

(xix) In sub-section (1) of Section 66 for the words and figures "sub-section (4) of Section 33", the following shall be substituted, namely:—

"[sub-section (3) of Section 10-A, or sub-section (2) of Section 19 of, or sub-rule (2) of rule 12 of Schedule 1 to,]¹ of the Excess Profits Tax Act, 1940, read with sub-section (4) of Section 33 of the Indian Income-tax Act, 1922".

4. Rules 8, 23, 24, 33, 34, 44, 45 and 46 of the Indian Income-tax Rules, 1922, shall apply subject to the modification that all references therein to "income-tax" and "the Income-tax Officer" shall be construed as references to "excess profits tax" and "the Excess Profits Tax Officer" respectively.

Form of Notice of Demand under applied Section 29.

5. The notice of demand or of determination of a deficiency of profits under applied Section 29 shall be in Form E. P. 4.

Form of notice in default of payment.

6. The notice in default of payment of excess profits tax shall be in Form E. P. 6.

Forms for Notice under Section 14A.

² [6A. Notice under sub-section (2) of Section 14A of the Act shall be in Form E.P. 3-1 and the order of assessment and notice of demand in respect of provisional assessment made under sub-section (3) of the said section—

1. These words were substituted for the words "sub-section (2) of Section 19 of" by notification No. 2 dated the 14th February 1942.

2. This rule was substituted by Notification No. 3 dated 3rd June 1944. The Form inserted by this rule after Form E. P. 4-7, Form E. P. 4-7-A, is printed at p. 316 *supra*.

(i) in respect of chargeable accounting periods ending before the 1st day of January 1944 shall be in Form E.P. 4-7, and

(ii) in respect of chargeable accounting periods ending after the 31st day of December 1943, shall be in Form E.P. 4-7A.]

Form of return
under Section 13(1). **7.** The return required under sub-section (1) of Section 13 of the Act shall be in Form E.P. 1.

**Form of applica-
tion under Section
6 (8).** **8.** An application to the Board of Referees under sub-section (3) of Section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E.P. 14.

**Form of applica-
tion under Section
26 (1).** **9.** An application to the Central Board of Revenue under sub-section (1) of Section 26 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E. P. 15.

**Form of applica-
tion under Section
26 (3).** **10.** An application to the Central Board of Revenue under sub-section (3) of Section 26 of the Act, for a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as the Central Board of Revenue thinks just, shall be made in Form E.P. 16 [but an application in respect of the earlier exhaustion of mineral sources shall be made in Form E.P. 16A.]¹

**Form of applica-
tion under Rule 7
of Sch. II.** ²[**10-A.** An application to the Central Board of Revenue under rule 7 of Schedule II to the Act for a direction that, in computing the average capital of a business during the standard period, certain assets shall be excluded for such period as they were inherently unproductive, shall be made in Form E. P. 30.]

**Form of appeal
under Section 8 (5).** **11.** An appeal under the proviso to sub-section (5) of Section 8 of the Act shall be made in Form E. P. 8A.

**Form of appeal
under Section 8 (8).** ²[**11-A.** An appeal under the proviso to sub-section (8) of Section 8 of the Act shall be in Form E. P. 28-A.]

**Form of appeal
under rule 11 of
Sch. I.** ³[**11-B.** An appeal against a determination by the Excess Profits Tax Officer under rule 11 of Schedule I to the Act shall be in Form E. P. 29 A.]

12. An appeal under Section 17 of the Act shall be—

**Form of appeal
under Section 17.** (a) in Form E. P. 9, if against a decision of the Excess Profits Tax Officer under Section 8 of the Act;

(b) in Form E. P. 10, if against the amount of an assessment made or a deficiency of profits under sub-section (1) of Section 14 of the Act;

(1) These words were added by Notification No. 2 dated the 14th February 1942.

(2) This rule was inserted by Notification No. 5 dated the 1st February, 1941.

(c) in Form E. P. 11, if against an order imposing a penalty under Section 10 or Section 16 of the Act or under sub-section (1) of applied Section 46;

(d) in Form E. P. 12, if in respect of an alleged insufficient relief or refund, or a refusal to grant relief or refund, by the Excess Profits Tax Officer.

Form of appeal under Section 18(1).

13. An appeal under sub-section (1) of Section 18 of the Act shall be in Form E.P. 13.

Form of application for refund under Section 7.

14. An application for refund of excess profits tax under Section 7 of the Act in respect of a deficiency of profits shall be in Form E. P. 17.

Form of application for relief under Section 11.

15. An application under Section 11 of the Act for relief in respect of double taxation shall be in Form E.P. 18.

Forms of appeal to the Appellate Tribunal.

¹[15A. An appeal under sub-section (2) of Section 19 of the Act shall, in the case of an appeal against—

(a) an order of the Excess Profits Tax Officer under Section 8, except an order making the apportionment under sub-section (5) or a modification under sub-section (8), be in Form E.P. 9 (T);

(b) an order of the Excess Profits Tax Officer under sub-section (1) of Section 14 of the Act be in Form E.P. 10/13 (T);

(c) an order of the Excess Profits Tax Officer imposing a penalty under sub-section (1) of the applied Section 46, be in Form E. P. 11 (1) (T);

(d) an order of the Excess Profits Tax Officer imposing a penalty under sub-section (3) of Section 10 of the Act, be in Form E. P. 11 (T);

(e) an order of the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner imposing a penalty under Section 16 of the Act, be in Form E. P. 11/13 (T);

(f) an order of the Excess Profits Tax Officer under Section 7 of the Act, granting or refusing to grant relief in respect of a deficiency, be in Form E. P. (12) (T);

(g) an order of the Excess Profits Tax Officer granting or refusing to grant relief in respect of double excess profits taxation under Section 11 of the Act, be in Form E. P. 12. (1) (T)];

²[(h) an order of the Excess Profits Tax Officer in so far as it concerns an adjustment made by him under Section 10 A of the Act, be in Form E. P. 14 (T);

(i) an order of the Excess Profits Tax Officer in so far as it concerns a disallowance made by him under rule 12 of Schedule I to the Act, be in Form E. P. 15 (T);]

16. The notice under sub-section (2) of Section 8 of the Act shall be given by the persons concerned within³ [the period under Section 8 (2). specified in the notice issued under sub-section (1) of

(1) This rule was inserted by Notification No. 7 dated the 15th February 1941.

(2) These sub-rules were added by Notification No. 2 dated 14th February 1942.

(3) These words were substituted for the words "60 days of the.....of the Act" by Notification No. 10. dated the 16th March 1941.

Section 13 of the Act or within the extended period allowed by the Excess Profits Tax Officer under the proviso thereto].

¹17. An appeal under the proviso to sub-section (5) of Section 8 of the Act shall be presented in the office of the Excess Profits Tax Officer by the person carrying on the business prior to the transfer or by the person to whom part of the business was transferred, as the case may be within 45 days of the date of receipt of the notice of the Excess Profits Tax Officer's apportionments.

¹[17-A. An appeal to the Appellate Tribunal under sub-section (2) of Section 19 of the Act, against an order of the Appellate Assistant Commissioner of Excess Profits Tax under Section 16 or 17 of the Act shall be made at any time before the expiry of sixty days from the date of such order.]

²[17 AA. An appeal to the Appellate Tribunal against any adjustment made by the Excess Profits Tax Officer under section 10A, or against any disallowance made by him under rule 12 of Schedule I to the Act shall be made at any time before the expiry of sixty days from the date of receipt of the order of assessment affected by such adjustment.]

³[17-B. The procedure to be followed on an appeal to the Appellate Tribunal under the Act, shall be the same, as nearly as may be, as that prescribed in respect of appeals to that Tribunal under the Income-tax Act.]

18. (1) The Excess Profits Tax Officer shall within fifteen days of the receipt of an application under sub-section (3) of Section 6, or of an appeal under sub-section (5) of Section 8, or under rule 11 of Schedule I, of the Act forward it to the Commissioner for being referred to a Board of Referees for decision.

(2) The Commissioner shall, in consultation with the Board of Referees appointed by him in accordance with the Excess Profits Tax (Boards of Referees) Rules, 1940, fix the time and place of the first meeting of the Board, and give notice thereof, not being less than one week, together with the names of the members constituting the Board, to the applicant in the case of an application, ⁵[to the appellant in the case of an appeal under the proviso to sub-section (8) of Section 8, or under rule 11 of Schedule I, of the Act, or to the appellant and the opposite party in the case of an appeal under sub-section (5) of Section 8 of the Act.]

(1) This rule was inserted by Notification No. 7 dated the 15th February 1941.

(2) This rule was inserted by Notification No. 2 dated the 14th February 1942.

(3) This rule was inserted by Notification No. 7 dated the 15th February 1941.

(4) These words were substituted for the words "of Section 8" by Notification No. 5 dated the 1st February 1941.

(5) These words were substituted for the words "and to the appellant and the opposite party in the case of an appeal" by Notification No. 5 dated the 1st February, 1941.

¹[(3) When the hearing of an application or appeal is adjourned, the Board of Referees shall inform the Commissioner and also the applicant or appellant as the case may be, or, in the case of an appeal under sub-section (5) of Section 8 of the Act, the appellant and the opposite party, of the time and place of the next hearing.]

(4) In sub-rules (2) and (3) the expression "opposite party" means the person by whom, or the person to whom, part of the business was transferred, according as the appeal is preferred by the transferee or the transferor.

19. (1) At the hearing of any appeal or application under the Act by a Board of Referees or an Appellate Assistant Commissioner, the Commissioner shall have the right to be represented by the Excess Profits Tax Officer or such other person as may be appointed by the Commissioner in that behalf.

Commissioner to be represented at hearing of appeals and applications.

(2) Notice of the date appointed for the hearing of any appeal or application under the Act shall also be given to the Excess Profits Tax Officer concerned.

²[20. *Investment-holding Companies.*—In the case of a business consisting wholly or mainly in the holding of investments—

(a) the income from investments to be included in the profits of the business under the provisions of Rule 4 of Schedule I to the Act shall be computed exclusive—

(i) of all income received by way of dividends or distribution of profits from a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies; and

(ii) of the due proportion of all income received by way of dividends or distribution of profits from a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies;

(b) the investments to be excluded from the capital employed in the business under Rule 3 of Schedule II to the Act shall include—

(i) all shares in a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies; and

(ii) the due proportion of all shares in a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies.

Provided that, if, in relation to any chargeable accounting period, a company to which this rule applies gives notice to the Excess Profits Tax Officer, within the time allowed under Section 13 of the Act for the furnishing of a return in respect of such chargeable accounting period, that the provisions of this Rule shall not be applied to it, its profits and average capital in relation to such chargeable accounting period shall be computed as if this Rule had not been made.]

(1) This sub-rule was substituted by Notification No. 2 dated the 1st February 1941.

(2) This rule was added by Notification No. 1 dated the 20th February 1948 and the proviso was added by Notification No. 7 dated 24th July 1948.

SCHEDULE.
Form E. P. 1.

Reference to be quoted
in all communications

EXCESS PROFITS TAX.

**NOTICE TO FURNISH RETURN OF PROFITS AND
OTHER PARTICULARS.**

To

In pursuance of the provisions of Section 13 (1) of the Excess Profits Tax Act, 1940, you are hereby required to furnish WITHIN SIXTY DAYS from the date of the service of this notice, in the form provided overleaf, a Return of the profits arising from the business ^{carried on by} _{carried on in the name of}

during the chargeable accounting period commencing
19 and ending 19 , together
with such other particulars relating thereto as are specified therein. The return duly signed by you, and the other particulars required therein, should be delivered to me at the address given below.

Notes for your guidance are contained in the enclosure to this form. If you desire any further information, application should be made to this office.

If you desire to make an application or election :—

(a) for increase of standard profits under Section 6 (3) or 26 (1): [See Notes for Guidance, Notes 4 (v) and (vi)] ;

(b) for modification of computation of profits of chargeable accounting period under Section 26 (3): [See Notes for Guidance, Note 8] ;

(c) in the case of changes of partnership under Section 8 (2): [See Notes for Guidance, Note 11 (i)] ;

(d) in the case of transfer of business after 1st April 1936 and before 1st September 1939: [See Notes for Guidance, Note 11 (v)] ;

¹ (e) for the exclusion from the average capital of the standard period of inherently unproductive assets under Rule 7 of Schedule II; [See Notes for Guidance, Note 9] ;

you are requested to intimate your intention in writing to this office *as early as possible*.

In the case of a company which is the subsidiary of another company resident in British India only the declaration on page 1388* need be completed.

Excess Profits Tax Officer.

Address

Dated the 194 .

Penalties.—Particulars are given on page 1390* of this form.

* The references are to the pages of the *Gazette of India* and correspond to pages 212 and 214 *infra*.

1, This sub-paragraph was inserted by Notification No. 9 dated the 8th March 1941,

EXCESS PRO-*Return of profits arising from Business in the chargeable ending 19 , and other particulars*

(1) Name and address of the person by whom the business was carried on in the above chargeable accounting period.

(2) In the case of a person not resident in British India, carrying on business in British India through an agent resident in British India, the full name and address of the agent through whom the business was carried on in the above chargeable accounting period.

(3) Nature of business carried on.

(4) Amount of profits arising in the above chargeable accounting period, computed in accordance with the Act. [See Notes for Guidance, Note 8.]

(5) Amount of standard profits computed in accordance with the Act. [See Notes for Guidance, Note 4.]

(6) Basis of computation of standard profits adopted—

(a) the profits of a standard period; or

(b) the application of the statutory percentage to the average amount of capital employed during the chargeable accounting period. [See Notes for Guidance, Note 4.]

(7) In the case of 6 (a) above, particulars of the standard period chosen, or in the case of 6 (b) above, the date of commencement of the business. [See Notes for Guidance, Note 5.]

(8) Proportionate amount of standard profits in the ratio of the chargeable accounting period to the standard period. [See Notes for Guidance, Note 4 (i).]

FURTHER PARTI-

You are required to furnish—

(i) copies of the Trading Accounts, Profit and Loss Accounts accounts of the business have been made up, which constitute or include

(ii) a copy of your computation of the profits of the chargeable is chosen, showing the amount of profits as computed for Income-tax of the First Schedule to the Act and of the adjustments due in respect chargeable accounting period as compared with that employed during employed (see items 3 and 4 on page 1389*).

(iii) the further particulars specified on pages 1388* and
STATE WHETHER YOU MAKE THE RETURN—

As proprietor of the business;

As partner in a partnership;

As Manager or Karta of a Hindu undivided family;

As principal officer of a company;

As member of an association;

As legal representative of a deceased person;

As liquidator of a company which is being wound up; or

As agent for a person not resident in British India.

*The references are to the pages of the *Gazette of India* and

FITS TAX*accounting period commencing
relating thereto.*

19 , and

(1)

(2)

(3)

(4) Rupees

(5) Rupees

(6)

(7) (a)

(b)

(8) Rupees.

CULARS REQUIRED.

and Balance Sheets of the business for all periods, for which the any part of the standard period or of the chargeable accounting period; accounting period, and of the standard period where a standard period purposes, details of each adjustment thereto required by the provisions of increase or decrease of the capital employed in the business during the the standard period; and of your computation of the average capital

1389* hereof.

DECLARATION.

I hereby declare that, to best of my knowledge and belief, the information given in this return is correct and complete, and the particulars transmitted herewith are truly stated.

Dated this

day of

194 .

Signature.

Address.

SCHEDULE OF FURTHER PARTICULARS REQUIRED UNDER

1. In the case of a Company

(a) The name and address of any company, whether or not resident in British India or trading in British India, which is a subsidiary of the company. [See Notes for Guidance, Note 12.]

(b) The name and address of the company, resident in British India, if any, of which the company is a subsidiary company. See Notes for Guidance, Note 12.

(c) In the case of a private limited company, the names of the shareholders in the accounting period which constitutes or includes the chargeable accounting period, with full particulars of the shares held by each. [See Notes for Guidance, Note 8.]

(If this space is insufficient, please attach a schedule of the required particulars.)

SECTION 13 (1) OF THE EXCESS PROFITS TAX ACT, 1940.

II. In all cases. (Particulars relating to average capital employed).

Rupees,

Amount of capital, computed in accordance with the provisions of the Second Schedule to the Act:—

1. Standard period—

(a) Where the standard period is a period of one "previous year"—

(i) as at the commencement of that "previous year,"

(ii) as at the end of that "previous year."

(b) where the standard period consists of two "previous years,"

(i) as at the commencement of the first of those "previous years,"

(ii) as at the end of the first of those "previous years,"

(iii) as at the commencement of the second of those "previous years,"

(iv) as at the end of the second of those "previous years."

NOTE.—Where the standard period consists of two consecutive "previous years," lines (ii) and (iii) should be treated as one.

2. Chargeable accounting period—

(a) as at the commencement of that period,

(b) as at the end of that period.

3. Average amount of capital employed during the standard period.

4. Average amount of capital employed during the chargeable accounting period.

5. Additions (+) or decrease (—) in capital employed—

(a) during the standard period ;

(b) during the chargeable accounting period
(See Note 2 below).

Description.	Rs.	Date.

NOTES :

1. Where the standard profits are taken to be the statutory percentage of the average capital employed during the chargeable accounting period, only items 2, 4 and 5 (b) need to be completed.

2. Particulars are required hereof, *inter alia*, income from excluded investments paid into and employed in the business; sales of business assets; drawings of proprietor or of partners or, in the case of a company, of dividends paid; income-tax and super-tax liabilities with the dates when such were due for payment.

3. See also Note 9 in Notes for Guidance.

PENALTIES.

1. Failure, without reasonable excuse, to deliver the Return with the other particulars required by the Excess Profits Tax Officer under the provisions of the Excess Profits Tax Act, the concealment of particulars of profits arising from or of capital employed in the business, or the deliberate furnishing of inaccurate particulars of such profits or capital entail penalties under Sections 16, 23 or 24 of the Act.

The penalties are, in the case of failure to deliver the return a sum not exceeding the amount of excess profits tax payable or, in other cases, a sum not exceeding the amount of the excess profits tax that would have been avoided if the return made had been accepted as correct. Alternatively, on conviction before a Magistrate, failure to make the return involves a fine which may extend to Rs. 500, with a further fine which may extend to Rs. 50 for every day during which the default continues, and a false return is punishable with simple imprisonment which may extend to six months, or with a fine which may extend to Rs. 1,000, or with both.

2. The penalty for entering into any fictitious or artificial transaction, or for carrying out any fictitious or artificial operation for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax is, in addition to such transaction or operation being treated as null and void for excess profits tax purposes, a sum not exceeding the tax evaded or sought to be evaded.

[Section 10.]

FORM E. P. 3-1.

EXCESS PROFITS TAX

*Notice under sub-section (2) of Section 14A of the Excess
Profits Tax Act 1940 (XV of 1940).*

Excess Profits Tax Office.....

Dated the.....194 .

To

.....
.....
.....

Whereas a notice under sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940 (XV of 1940), in respect of the chargeable accounting period commencing.....19...and ending.....19..., has been served on you on.....19..., I hereby give you notice of my intention to make a provisional assessment in accordance with the provisions of sub-section (3) of Section 14A of the said Act as follows:—

If you object to the amount of such proposed provisional assessment you should, within fourteen days of receipt of this notice deliver to me a statement of your objections thereto.

Signed

Excess Profits Tax Officer.

Form E. P. 4.

EXCESS PROFITS TAX

*Notice of Demand Under Rule 5 of the Excess
Profits Tax Rules read with Section 29
of The Indian Income-Tax Act, 1922.*

To

1. Take notice that for the chargeable accounting period,
commencing 19 and ending 19 ,

*the sum of Rs. Excess Profits Tax, as specified
overleaf, has been determined to be payable by you.

*a deficiency of profits of Rs. has been computed as
shown overleaf.

2. *You are required to pay the amount on or before 194 ,

*Treasury Officer
Sub Treasury Officer
to the Agent, Imperial Bank of India at when you
Governor, Reserve Bank of India
will be granted a receipt.

3. If you do not pay the amount on or before 194
you will be liable to a penalty, under Section 46 (1) of the Indian
Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21
of the Excess Profits Tax Act, 1940, which may be as great as the
excess profits tax due from you.

4. If you intend to appeal against the assessment, or the amount
of the deficiency, you may present an appeal under sub-section (1) of
Section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assist-
ant Commissioner of Excess Profits Tax at

within 45 days of the receipt of this notice in the form prescrib-
ed under sub-section (3) of Section 17 duly stamped and verified as laid
down in that form. A copy of the form may be obtained from this
office.

5. A copy of my assessment order and of my computations of the
standard profits and the profits of the chargeable accounting period is
enclosed herewith.

Excess Profits Tax Officer.

Dated

194

} Address.

ASSESSMENT FORM

ASSESSMENT UNDER SECTION 14 OF THE EXCESS PROFITS TAX ACT, 1940,
FOR THE CHARGEABLE ACCOUNTING PERIOD COMMENCING 19
AND ENDING 19 (MONTHS)

Name of assessee

Status

Address

Circle.

No. in General Index.

No. in E. P. T Register.

		Rupees	
1.	Profits of the chargeable accounting period as computed for Excess Profits tax purposes. ....	.....
2.	Profits of standard period or months where standard profits available--		
	(i) as computed for excess profits tax purposes or	Rs.....	
	(ii) as determined by the Board of Referees under Section 6 (3) or	Rs.....	
	(iii) as determined by Central Board of Revenue under Section 26 (1) ...	Rs.....	
3.	Proportion of (2) appropriate to chargeable accounting period of months ...	Rs.....	
4.	Average amount of capital employed during chargeable accounting period ...	Rs.....	
5.	Average amount of capital employed during standard period ...	Rs.....	
6.	Increase (+) or decrease (—) in the average capital employed during chargeable accounting period ...	Rs.....	
7.	Statutory percentage of % per annum thereon for months ...	Rs.....	
8.	Adjusted standard profit in relation to chargeable accounting period (3) + or — (7) or ...	.....
9.	Where percentage standard chosen under the second proviso to Section 6 (1) % per annum for the chargeable accounting period of ... months on the average capital of Rs. employed during the chargeable accounting period or ...	.....
10.	Where minimum standard of 36,000 applicable, due proportion thereof ...	.....
11.	Excess Profits (+) or Deficiency ( — ) ...	.....
		at 50%	at 66 2/3%
		Rs.	Rs.
12.	Excess Profits assessable ...	.....	.....
13.	Deficiency of profits set off ...	.....	.....
14.	Net excess profits assessed ...	.....	.....
15.	Excess Profits Tax ...	.....	.....
16.	Excess Profits Tax, Total ...	Rs.	.....
17.	Double Excess Profits Taxation relief ...	.....	.....
18.	Net amount of Excess Profits Tax payable ...	.....	.....
19.	Add (i) Penalty under Section 16 (3) ...	.....	.....
	(ii) Penalty under Section 16 ...	.....	.....

TOTAL SUM PAYABLE (in figures as well as words),

Rs.

as.

(words).

(figures) Rs.

annas
Dated

194

* Delete inappropriate items

Items 12 to 19 were substituted by Notification No. 17 dated the 26th April 1941.

Form E. P. 4-7.

EXCESS PROFITS TAX.

Assessment order and notice of demand in respect of Provisional Assessments made under Sub-section (3) of Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940).

To

.....

1. Take notice that, following the issue on the 19, of notice under the sub-section (2) of Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940) of my intention to make a provisional assessment in respect of your estimated liability to Excess Profits Tax for the chargeable accounting period commencing 19 and ending 19, I, * having taken into account your statement of objections thereto dated 19, have determined provisionally the excess profits of such period to be the sum of Rs. and that the Excess Profits Tax payable in respect thereof is—

			Rs.
for the period commencing	19		
and ending	19	Rs.	@ 50% =
and for the period commencing	19		
and ending	19	Rs.	@ 66⅔% =
Total			

2. You are required to pay the amount on or before.

.....19...to
 Treasury Officer
 Sub Treasury Officer
 Branch of Imperial Bank of India
 Reserve Bank of India.

at when you will be granted a receipt.

3. If you do not pay the amount on or before

19, you will be liable to a penalty under Section 46 (1) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940 (XV of 1940) which may be as great as the amount of the Excess Profits Tax hereby assessed.

Delete inappropriate words.

Form E. P. 6.**PENALTY IMPOSED IN DEFAULT OF PAYMENT OF
EXCESS PROFITS TAX.**

Notice of Demand under Section 29 of the Indian Income Tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940.

To

Whereas you have not paid the sum of Rs. **Excess Profits Tax**, assessed for the chargeable accounting period commencing 19 , and ending 19 , on the prescribed date, viz. , in accordance with the Notice of Demand served on you on 194 , you are hereby informed that a penalty of Rs. has been imposed upon you under Section 46 (1) of the Indian Income-tax Act, 1922, which is applied to Excess Profits Tax by virtue of Section 21 of the Excess Profits Tax Act, 1940.

2. You are further warned that unless the total amount due, including this penalty, is paid on or before 194 , a further penalty will be imposed on you (and a warrant of distress will be issued for the recovery of the whole amount due with costs).

3. You are required to pay the amount to the

*Treasury Officer

Sub-Treasury Officer

Agent, Imperial Bank of India — at

Governor, Reserve Bank of India

when you will be granted a

receipt.

4. If you intend to appeal against this penalty you may present an appeal under sub-section (1) of Section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assistant Commissioner of Excess Profits Tax at within 45 days of the receipt of this notice, in the form prescribed under sub-section (3) of Section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

Excess Profits Tax Officer.

Dated

19 .

} Address.

Form E. P. 8A.

Form of Appeal under the Proviso to Section 8 (5) of the Excess Profits Tax Act, 1940.

To

THE BOARD OF REFEREES,

The day of

194 .

The petition of

of

sheweth as follows:—

1. transferred as a going concern on 19
a part of his business to

* Delete inappropriate words.

2. Under the provisions of sub-section (5) of Section 8 of the Act the Excess Profits Tax Officer has

*(a) apportioned the profits of the said business for the "previous years" from which, under Section 6 (1), the standard periods of the business retained by and of the business transferred to may be selected as follows :—

	Business retained	Business transferred.
	Rs.	Rs.
" Previous year " ended	19	
" Previous year " ended	19	
" Previous year " ended	19	
" Previous year " ended	19	

*(b) apportioned the average capital employed in the said business during those "previous years" as follows :—

	Business retained	Business transferred.
	Rs.	Rs.
" Previous year " ended	19	
" Previous year " ended	19	
" Previous year " ended	19	
" Previous year " ended	19	

3. Your petitioner objects to the apportionment made as set out above, as follows :—

*(a) Profits of the "previous year" ended	19
Profits of the "previous year" ended	19
Profits of the "previous year" ended	19
Profits of the "previous year" ended	19
*(b) Average capital employed during the	
"previous year" ended	19
Average capital employed during the	
"previous year" ended	19
Average capital employed during the	
"previous year" ended	19
Average capital employed during the	
"previous year" ended	19

4. Your petitioner therefore requests that the apportionment so specified may be modified to the extent set out in the Grounds of Appeal.

Signed.

GROUND OF APPEAL.

Form of verification.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

*Insert particulars of the periods in respect to which the appeal is made.

Form E. P. 9

Form of appeal against a decision under Section 8 of the Excess Profits Tax Act other than a decision under the proviso to Sub-section (5) [or Sub-section (8)¹] of Section 8.

To

THE APPELLATE ASSISTANT COMMISSIONER OF

EXCESS PROFITS TAX,

The day of 194 .

The petition of of sheweth as follows :—

1. Your petitioner is not satisfied with the decision of the Excess

*sub-section (2)sub-section (3)Profits Tax Officer made under sub-section (4) of Section 8 of the Excesssub-section (6)sub-section (7)

Profits Tax Act, 1940.

2. Your petitioner received *a copy of the order on 194 .
an intimation of the said decision

3. For the reasons given in the grounds of appeal, your petitioner prays that the decision of the Excess Profits Tax Officer may be modified so as to grant your petitioner the relief prayed for.

Signed.

GROUNDS OF APPEAL

Form of verification.

I, , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief. Signed.

Form E. P. 10.

Form of appeal against assessment under Section 14 (1) of the Excess Profits Tax Act, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS

PROFITS TAX,

The day 19 .

The petition of of sheweth as follows :—

1. Under Section 14 (1) of the Excess Profits Tax Act,
* the profits liable to Excess Profit Tax of your petitioner's business for the
the deficiency of profits

chargeable accounting period commencing 19 , and ending

19 , have
has been determined to be Rs.*notice of demand2. The intimation of the amount of deficiency of profits attached hereto was
intimation of the order of refunds
served upon your petitioner on 194 .* Inappropriate items to be deleted.

(1) These words were inserted by notification No 17, dated the 26th April 1941,

3. Your petitioner ^{*complied with} the terms of the notice(s) _{did not comply with} under sub-section (1) and/or sub-section (2) of Section 13 of the Excess Profits Tax Act.

4. Your petitioner's claim that during the said chargeable accounting period ^{*the profits liable to Excess Profits Tax} of your petitioner's _{deficiency of profits} business amounted to Rs.

5. Your petitioner therefore prays that ^{*the business may be assessed accordingly.} _{the deficiency of profits may be determined accordingly.} he may be granted a refund of Rs.

Signed.

GROUND OFS OF APPEAL.

Form of Verification.

I, _____, the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

Form E. P. 11.

Form of Appeal to the Appellate Assistant Commissioner against imposition of penalty under Section 10 or Section 16 of the Excess Profits Tax Act, 1940, or under Section 46 (1) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS PROFITS TAX.

The _____ day of _____ 194 .

The petition of _____ of _____

sheweth as follows :—

1. A penalty of Rs. _____, for which the notice of demand attached herewith was received on _____ 194 , has been imposed ^{*Section 10 of the Excess Profits Tax Act, 1940.} on your petitioner under ^{Section 16 of the Excess Profits Tax Act, 1940.}

^{Section 46 (1) of the Indian Income-tax Act, 1922.}

2. *Your petitioner did not enter into any artificial transaction for the purposes of avoiding the excess profits tax.

*Your petitioner had reasonable cause for not furnishing the return under sub-section (1) of Section 13 or for not complying with the notice under sub-section (2) of Section 13.

*Your petitioner did not conceal particulars of the profits arising or capital employed in the business or deliberately furnish inaccurate particulars thereof.

*Your petitioner was unable to pay the tax within time for the reasons set forth below.

3. For the reasons given in the Grounds of Appeal your petitioner therefore prays that the order of the Excess Profits Tax Officer imposing the penalty may be set aside.

Signed.

* Inappropriate items to be deleted.

GROUND OFS OF APPEAL.

Form of Verification.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

Form E. P. 12

Form of Appeal against the Amount of Relief or Refund or against refusal to grant relief or refund under Section 7 or Section 11 of the Excess Profits Tax Act, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS PROFITS TAX,

The _____ day of _____ 194 .
The petition of _____ of _____ sheweth as follows :—

* 1. Your petitioner applied to the Excess Profits Tax Officer for relief under Section 7 of the Excess Profits Tax Act in respect of a deficiency of profits amounting to Rs. _____ occurring in the chargeable accounting period commencing _____ 19 , and ending _____ 19 .

* Your petitioner claimed, under Section 11 of the Excess Profits Tax Act, relief amounting to Rs. _____ in respect of excess profits taxation imposed in _____ upon the profits of your petitioner's business.

2. The Excess Profits Tax Officer has by his order, dated the _____ of which a copy is attached *rejected the claim for relief _____ granted relief of only Rs. _____

Intimation of this order was received by your petitioner on _____

3. Your petitioner for the reasons stated in the Grounds of Appeal prays that the full relief due to the petitioner may be granted.

Signed.

GROUND OFS OF APPEAL.

Form of Verification.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

Form E. P. 13

Form Appeal to the Commissioner of Excess Profits Tax against Enhancement of Tax or Penalty or Imposition of Penalty by the Appellate Assistant Commissioner.

To

THE COMMISSIONER OF EXCESS PROFITS TAX,

The _____ day of _____ 194 .
The petition of _____ of _____ sheweth as follows :—

*Inappropriate items to be deleted.

1. The Appellate Assistant Commissioner of Excess Profits Tax at

* has imposed on your petitioner, under Section 16 of the Excess Profits Tax Act, 1940, a penalty of Rs.

* has, under Section 17 (4) of the Excess Profits Tax Act, 1940, increased $\frac{\text{tax}}{\text{penalty}}$ payable by your petitioner
from Rs. to Rs.

2. For the reasons stated in the Grounds of Appeal your petitioner prays that ~~the order imposing the penalty may be set aside~~
~~the enhancement may be set aside~~
the enhancement may be reduced to Rs.

Signed.

GROUND OF APPEAL.

Form of Verification.

I, , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

Form E. P. 14.

EXCESS PROFITS TAX ACT, 1940.

Form of Application under Section 6 (3).

To

THE EXCESS PROFITS TAX OFFICER,

The day of 194 .

The application of of sheweth as follows :—

1. That the applicant has been served with a notice under Section 13 (1) of the Act on and that the Return required by the said notice is due on .

2. That the standard period elected by the applicant under Section 6 (2) of the Act is the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the Income-tax assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 ,

¹ and the previous year as determined under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the Income-tax assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 .

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs. .

* Inappropriate words to be deleted.

(1) Where a standard period of only one "previous year" is chosen delete this subparagraph.

4. That such profits were less than might at the commencement of such standard period have been reasonably expected owing to the following cause (s):—

5. That the average amount of capital employed in the business during the said standard period, computed in accordance with the provisions of the Second Schedule to the Act was Rs.

6. The applicant therefore applies that his case be referred to the Board of Referees under Section 6 (3) of the Act for a direction that the standard profits of the business shall be computed as if the profits during the standard period were such greater amount as they may think just.

7. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause (s) peculiar to the business:—

8. Copies of my computations showing how the sums referred to in paragraphs 4 and 6 are arrived at are attached hereto.

Signature of the applicant.

Form of Verification.

I, _____, the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

Form E. P. 15

EXCESS PROFITS TAX ACT, 1940

Form of Application under Section 26 (1).

To

THE CENTRAL BOARD OF REVENUE

The _____ day of _____ 194 .
The application of _____ of _____ sheweth as follows:

1. That the applicant has been served with a notice under Section 13 (1) of the Act on _____ 194 , and that the Return required by the said notice * is due on _____ 194 .
* has been duly furnished to the Excess Profits Tax Officer.

2. That the standard period elected by the applicant under Section 6 (2) of the Act is the "previous year" as determined, under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19 _____, being the period commencing _____ 19 _____, and ending _____ 19 _____, * and the "previous year" as determined, under Section 2 (11) of the Indian Income-tax Act, 1922, for the purpose of the income-tax

* Delete inappropriate items.

assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 .

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs. .

4. That special circumstances, which render it inequitable that the standard profits of the applicant's business shall be computed as set out in paragraph 3, exist, that is to say :—

5. That the average amount of capital employed in the business during the chargeable accounting period commencing 19 , and ending 19 , computed in accordance with the provisions of the Second Schedule of the Act, and

6. *That application has been made to the Board of Referees under Section 6 (3) of Act, and

*that no relief has been granted by that Board,

*that insufficient relief has been granted by that Board increasing the said standard profit to Rs. only.

7. The applicant therefore applies that under Section 26 (1) of the Act the Central Board of Revenue may direct that the standard profits of the business shall be computed as if the profits of the standard period were such greater amount as they think just.

8. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause(s) peculiar to the business.

9. Copies of my computations showing how the sums referred to in paragraphs 3 and 5 are arrived at are attached thereto.

Signature of the applicant.

Form of Verification.

I, , the applicant in this application, do declare that particulars above stated are true to the best of my information and belief.

Signature.

* Delete inappropriate items.

Form E. P. 16

EXCESS PROFITS TAX ACT, 1940

Form of Application for special allowance under the provisions of Section 26 (3) of the Act, in computing the profits of a business during a chargeable accounting period.

Name of applicant

Address of applicant

Business

The

day of

194 .

TO THE CENTRAL BOARD OF REVENUE,

The applicant named above submits :—

1. that the profits of his business during the chargeable accounting period commenced 19 , and ended 19 , computed in accordance with the provisions of the First Schedule to the Act are Rs.

2. that such computation is inequitable owing to the following circumstances:

*(i) the suspension or postponement, as a consequence of the present hostilities, of repairs or renewals;

*(ii) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities;

*(iii) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India:

as shown in the statement of particulars set out on opposite page of this form.

Signature of applicant.

*Delete inappropriate items.

SCHEDULE OF PARTICULARS REQUIRED.

1*. In the case of suspension or postponement of repairs or renewals.

Nature of the repair or renewal.	Date when, but for the present hostilities, the repair or renewal would have been executed.	Estimated cost thereof as at that date.	Actual cost of repairs and renewals executed in the period constituting or including the chargeable accounting period.	Actual average expenditure on repairs and renewals during the five preceding years.
1	2	3	4	
		Rs.	Rs.	Rs.

2*. In the case of buildings, plant or machinery provided which after the termination of hostilities, will not be required.

Description of each item.	Date when each item provided	Cost of each item.	Reasons why each item will not be required after the termination of the present hostilities.
1	2	3	4
		Rs.	

3*. In the case of difficulty in bringing into British India money arising in a country outside British India, by reason of the laws of that country restricting or prohibiting the remittance of money to British India.

Country in which income accrued.	Amount of income accrued and not re- mitted (in currency of that country). 2	Amount thereof assessed for income- tax purposes in British India. 3	Estimated ultimate loss owing to non- remittance.
-------------------------------------	--	--	---

Rs.

Rs.

4*. In the case of loss on remittance owing to fluctuations in rates of exchange.

Country in which income accrued.	Amount of in- come accrued (in currency of that country.) 2	Amount realiz- ed by remit- tance thereof. 3	Amount as assessee to Indian income-tax. 4	Deduction claimed in respect of loss in remittances.
		Rs.	Rs.	Rs.

I, _____, the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

* Particulars to be entered in appropriate spaces only.

¹ Form E. P. 16-A.

EXCESS PROFITS TAX ACT, 1940.

Form of application for Special Allowance, under the provisions of Section 26 (3) [Head (d)] of the Act, in computing the profits of a business during a chargeable accounting period.

Name of applicant
Address of applicant
Business

The _____ day of _____ 194 .

TO THE CENTRAL BOARD OF REVENUE,

The applicant named above submits :—

1. that the profits of his business during the chargeable accounting period commenced _____ 19 , and ended _____ 19 , computed in accordance with the provisions of the First Schedule to the Act are Rs. _____ ;

(1) This form was inserted by Notification No. 2 dated the 14th February, 1942.

2. that such computation is inequitable owing to the following circumstances, namely :—

the business includes the winning of a mineral or mineral oil, the winning of which is of exceptional importance for the prosecution of the war and that, during the chargeable accounting period above mentioned, there was an increase in the output of such mineral or mineral oil which was essential in the national interest and which has had the effect of shortening the period during which, but for such increased output, the source of the mineral or mineral oil might have been expected to be exhausted ;

as shown in the statement of particulars set out on the back of this form.

Signature of applicant.

Schedule of particulars required.

- | | | |
|----|--|----|
| 1. | Description of the minerals. | |
| 2. | Description, including particulars of the area, of the source of the minerals. | |
| 3. | Output of the minerals. | |
| | (a) in the standard period being— | |
| | (i) the period commencing | 19 |
| | and ending | 19 |
| | and | |
| | *(ii) the period commencing | 19 |
| | and ending | 19 |
| | (b) in the chargeable accounting period— | |
| | (i) commencing | 19 |
| | and ending | 19 |
| | *(ii) commencing | 19 |
| | and ending | 19 |
| | *(iii) commencing | 19 |
| | and ending | 19 |
| 4. | The date by which, but for the increased war-time output it is estimated that the source of the minerals would have been exhausted. | |
| 5. | The facts upon which the applicant bases his claim that the winning of the minerals was of exceptional importance for the prosecution of the present war and that the increased output was essential in the national interest. | |

I, _____, the applicant in this application, do declare that the particulars above-stated are true to the best of my information and belief.

Signature.

Form E. P. 17.*Application for Refund of Excess Profits Tax in Respect of Deficiency of Profits.*

To

THE EXCESS PROFITS TAX OFFICER,

I, _____ of _____ do hereby declare that for the chargeable accounting period commencing 19____, and ending 19____, the excess profits arising from the business of _____ were determined at Rs. _____ and charged to tax amounting to Rs. _____. The tax was paid on 194____.

I further declare that during the chargeable accounting period commencing 19____, and ending 19____, there was a deficiency of profits in the same business amounting to Rs. _____.

I therefore pray for a¹ [provisional*] refund of Rs. _____. The Return prescribed under Section 13 (1) of the Act showing the said deficiency of profits is attached hereto.

Dated the _____ 194____. Signature. _____

Form of Verification.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the _____ 194____. Signature. _____

* The word 'provisional' should be deleted except where a deficiency of profits arising after the end of March 1941 is to be set off against excess profits arising before the end of March 1941.

Form E. P. 18.*Application for Refund in Respect of Double Excess Profits Taxation.*

To

THE EXCESS PROFITS TAX OFFICER,

I, _____ of _____ do hereby declare that excess profits arising from the business of _____ for the chargeable accounting period commencing 19____, and ending 19____, have been charged to excess profits tax both in British India and in² _____. Official receipts are attached for _____ excess profits tax of Rs. _____ paid on 19____, and for British Indian excess profits tax of Rs. _____ paid on 19____.

(1) The word and asterisk "provisional" and the footnotes were inserted by Notification No. 17 dated the 26th April 1941.

(2) Insert name of Country or State in which tax paid.

I therefore pray for relief amounting to Rs. under

(a) sub-section (1) of Section 11 of the Act in accordance with the notification of the Central Government under that section.

(b) sub-section (2) of that section.

[Delete (a) or (b), whichever is inapplicable].

Dated

194

Signature.

Form of Verification.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the

194 .

Signature.

¹ Form E. P. 28-A.

EXCESS PROFITS TAX ACT, 1940.

Form of appeal against modifications of the computations of profits and capital made by the Excess Profits Tax Officer under sub-section (8) of Section 8 of the Excess Profits Tax Act, 1940.

To

THE BOARD OF REFEREES

c/o THE EXCESS PROFITS TAX OFFICER,

The

day of

194 .

The petition of

of

sheweth as follows:—

1. Your petitioner's business carried on by him during the chargeable accounting period commencing 19
and ending 19

*has, by virtue of sub-section * (2)/* (3) been deemed not to have
*been discontinued is treated, by virtue of sub-section
(4), as if it had been in existence throughout the period during which
there was in existence another business.

*is treated, by virtue of sub section (5) as a continuation of another
*business your petitioner, who has carried

on the business after its transfer to him on the day
of 19 , is treated, by virtue of sub-section (8)
as having carried on the business as from a date before such transfer.

2. Your petitioner was served on with a
*notice of the modifications made by the Excess
*Profits Tax Officer of the refusal of the Excess
Profits Tax Officer to make modifications under sub-section (8) of
Section 8 of the Excess Profits Tax Act, 1940.

1. This form was inserted by Notification No. 5 dated the 1st February 1941.

* Inappropriate words to be deleted.

3. For the reasons given in the grounds of appeal your petitioner is not satisfied with *the modifications aforesaid
*the refusal aforesaid.

4. Your petitioner, therefore, prays that the ^{*modifications}/_{*refusal} abovementioned may be ^{*set aside}/_{*amended} so as to grant your petitioner the relief prayed for.

GROUND OF APPEAL.

Signed.

Form of verification.

I, _____, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

¹ Form E. P. 29-A.

EXCESS PROFITS TAX ACT, 1940.

Form of appeal against the determination of the Excess Profits Tax Officer under Rule 11 of the First Schedule to the Excess Profits Tax Act, 1940.

To

THE BOARD OF REFEREES,

c/o THE EXCESS PROFITS TAX OFFICER,

The _____ day of _____

194 .

The petition of _____

of _____

sheweth as follows :—

1. Your petitioner is not satisfied with the determination of the Excess Profits Tax Officer under Rule 11 of the First Schedule to the Act, that the sum of Rs. _____ allowable, apart from the provisions of that rule as deduction in computing the profits of the accounting period commencing _____ 19 _____ and ending _____ 19 _____, does not represent a sum reasonably and properly attributable to that accounting period and that it shall be treated as attributable as to

(i) the sum of Rs. _____ to the accounting period commencing _____ 194 _____ and ending _____ 194 _____

*and (ii) the sum of Rs. _____ to the accounting period commencing _____ 194 _____ and ending _____ 194 _____

*and (iii) the sum of Rs. _____ to the accounting period commencing _____ 194 _____ and ending _____ 194 _____

2. Your petitioner received a copy of the order notifying the said determination on _____ 194 _____

*Inappropriate words to be deleted.

(1) This form was inserted by Notification No. 5 dated the 1st February 1941.

3. For the reasons given in the grounds of appeal, your petitioner prays that the determination of the Excess Profits Tax Officer may be ^{*set aside} ~~*amended~~ so as to grant your petitioner the relief prayed for.

GROUND OF APPEAL.

Signed.

Form of Verification.

I, _____, the petitioner named in the above petition do declare that what is stated therein is true to the best of my knowledge and belief.

Signed.

¹ Form E. P. 30.

EXCESS PROFITS TAX ACT, 1940.

Form of application for allowance in respect of inherently unproductive assets under Rule 7 of the Second Schedule.

To

THE EXCESS PROFITS TAX OFFICER,

The _____ day of _____ 194 .
The application of _____ of _____ sheweth as follows:—

1. That the applicant has been served with a notice under Section 13 (1) of the Act on _____ 194 and that the Return required by the said notice

* is due on _____ 194 .
* has been duly furnished to the Excess Profits Tax Officer.

2. That the standard period elected by the applicant under Section 6 (2) of the Act is the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19 , being the period commencing _____ 19 and ending _____ 19 *and the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19 , being the period commencing _____ 19 and ending _____ 19 .

3. (a) That certain assets, namely _____ were inherently unproductive during the whole or some part of the said standard period;

(b) that the cost of those assets was Rs. _____ ;

(c) that the average capital employed in the business during the standard period in respect of those assets computed in accordance with Rules 1 to 6 of the Second Schedule to the Act was Rs. _____

(d) that the circumstances, by reference to which the applicant claims that the assets were inherently unproductive, are _____

4. The applicant therefore applies that, under Rule 7 of the Second Schedule to the Act, the Central Board of Revenue may direct that the

*Inappropriate words to be deleted.

(1) This form was inserted by Notification No.5 dated the 1st February 1941.

average capital employed in the applicant's business during the standard period shall be computed as if the assets above-mentioned had not been assets of the business from 19 to 19 .

5. A Copy of my computation showing how the sum referred to in paragraph 3 (c) is arrived at is attached hereto.

Signature of applicant.

Form of Verification.

I, _____, the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

¹Form E. P. 9(T).

Form of Section 8 Excess Profits Tax Act Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

8 E.P.T.A.A. No.

of 19 19

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.	
Excess Profits Tax Officer making the original order.	
Sub-section of section 8 under which the order was made and the substance of the order.	
Date of the original order.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled etc., on appeal.	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

(To be filled in by the office).

1. Forms E. P. 9 (T) to E. P. 12 (1) T were inserted by Notification No. 7 dated the 15th February 1941.

FORM E. P. 9(T)—*contd.**Grounds of Appeal.*

Signed

(Appellant.)

Signed

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E.P. 10/13 (T).

Form of Section 14 (1) Excess Profits Tax Act Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

14 (1) E.P.T.A.A. No.

of 19 ____ -19 ____ *

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Whether the terms of notices under sub-sections (1) and (2) of section 13 were complied with.

Excess Profits Tax Officer making the original order.

Profits assessed to excess profits tax.

Deficiency determined.

* To be filled in by the office.

FORM E. P. 10/13 (T).—*contd.*

Amount of net tax determined.	
Date of receipt of notice of demand.	
Date of receipt of the copy of the order determining deficiency of profits.	
Date of intimation of the order of refund.	
Appellate Assistant Commissioner determining the appeal.	
Profits held assessable to excess profits tax by the Appellate Assistant Commissioner.	
Deficiency determined by the Appellate Assistant Commissioner.	
Refund, if any, made by the Appellate Assistant Commissioner.	
Enhancement of profits and tax, if any, made by the Appellate Assistant Commissioner.	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.
(Appellant.)

Signed.

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what I have stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____
(Signed).

FORM E.P. 10/13 (T).—*contd.*

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E P. 11 (1) (T).

Form of Section 46 (1) Penalty Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

46 (1) E.P.T.A.A. No.

of 19

19*

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Officer making the original order.

Amount of tax determined.

Amount of tax in arrears.

Period during which default continued.

Amount of the penalty.

Date of receipt of notice of demand.

Appellate Assistant Commissioner determining the appeal.

Whether the original order was confirmed, or cancelled or varied on appeal, and if varied in what respect.

Date of the appellate order.

Date on which the appellate order came to the knowledge of the appellant.

* To be filled in by the office.

FORM E.P. 11 (1) (T).—*contd.*

Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

*Grounds of Appeal.*Signed
(Appellant.)Signed
(Authorised representative, if any.)*Verification.*

I, _____, the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E. P. 11 (T).

Form of Section 10 Excess Profits Tax Act Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

10 E.P.T.A.A. No. _____ of 19 _____ -19 ____.*

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Excess Profits Tax Officer making the original order.

Date of receipt of notice of demand.

* (To be filled in by the office.)

FORM E. P. 11 (T).—*contd.*

Amount of the penalty.	
Amount of the tax evaded or sought to be evaded as found by the Excess Profits Tax Officer.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied in what respect.	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which the notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.

(Appellant.)

Signed.

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what I have stated above is true to the best of my information and belief.
 Verified today the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

¹ Form E. P. 11/13 (T).

Form of Section 16 Excess Profits Tax Act Appeal.

IN

THE (INCOME TAX) APPELLATE TRIBUNAL, DELHI.
16 E.P.T.A.A. No. _____ of 19 ____

of 19 -19 .*

APPELLANT.

versus

RESPONDENT.

Province from which the appeal is filed.

Officer making the original order.

Date of receipt of notice of demand.

Amount of the penalty.

Reason for imposing the penalty.

Appellate Assistant Commissioner determining the appeal.

Whether the original order was confirmed, cancelled, or varied on appeal, and if varied in what respect.

Date of the appellate order.

Date on which the appellate order came to the knowledge of
the appellant.

Postal address on which the appellant undertakes to receive notices.

Postal address on which notices should be issued to the respondent.

Relief claimed in appeal.

Grounds of Appeal.

Signed.

(Appellant.)

Signed.

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____.

Signed ().

* (To be filled in by the office).

FORM E. P. 11/13 (T).—*contd.*

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E. P. 12 (T).

Form of Section 7 Excess Profits Tax Act Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL, DELHI.

7 E.P.T.A.A. No.

of 19 -19 .*

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Chargeable accounting period.

Excess Profits Tax Officer who made the original order.

Deficiency of Profits in respect of which relief was claimed before the Excess Profits Tax Officer.

Repayment or refund claimed.

Deficiency determined.

Repayment or refund allowed.

Date of receipt of the copy of the order determining the deficiency.

Date of receipt of the intimation of the order granting or refusing to grant relief by repayment or otherwise.

Appellate Assistant Commissioner determining the appeal.

Deficiency found by the Appellate Assistant Commissioner.

* (To be filled in by the office).

Form E.P. 12 (T).—contd.

Repayment or refund ordered by the Appellate Assistant Commissioner.

Date of the appellate order.

Date on which the appellate order came to the knowledge of the appellant.

Postal address on which the appellant undertakes to receive notices.

Postal address on which notices should be issued to the respondent.

Relief claimed in appeal.

rounds of Appeal.

Signed
(Appellant.
Signed

(Authorised representative, if any.)

Verification.

I, _____ the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E.P. 12 (1) (T).

Form of Section 11 Excess Profits Tax Act Appeal.

IN

THE (INCOME-TAX) APPELLATE TRIBUNAL DELHI.
11 E.P.T.A.A. No. _____ of 19 _____ —19 ____.*

versus

APPELLANT.

RESPONDENT.

Provinces from which the appeal is filed.

* (To be filled in by the office).

FORM E. P. 12 (1) (T).—*contd.*

Chargeable accounting period

Excess Profits Tax Officer who made the original order.

Relief claimed before the Excess Profits Tax Officer.

Grounds on which relief was claimed before the Excess Profits Tax Officer.

Relief granted by the Excess Profits Tax Officer.

Date of receipt of the intimation of the order granting or refusing to grant relief.

Appellate Assistant Commissioner determining the appeal.

Relief granted by the Appellate Assistant Commissioner.

Date of the appellate order.

Date on which the appellate order came to the knowledge of the appellant.

Postal address on which the appellant undertakes to receive notices.

Postal address on which notices should be issued to the respondent.

Relief claimed in appeal.

Grounds of Appeal.

Signed.

(Appellant.)

Signed.

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what is stated above is true to the best of my information and belief.
 Verified today the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

3. The appeal must be accompanied by a Treasury receipt for Rs. 100.

Form E. P. 14 (T)†

Form of Section 10-A Excess Profits Tax Act Appeal.

IN THE (INCOME-TAX) APPELLATE TRIBUNAL, NEW DELHI.

10-A. E.P.T.A.A. No. of 19 —19 .*

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Excess Profits Tax Officer making the order.

Substance of the order made under Section 10-A

Date of the order.

Date on which the order of assessment affected by such adjustment was served on the appellant.

Postal address on which the appellant undertakes to receive notices.

Postal address on which notices should be issued to the respondent.

Relief claimed in appeal.

*Grounds of Appeal.*Signed
(Appellant.)Signed
(Authorised representative, if any).*Verification.*

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ().

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

* To be filled in by the office.

† This form was added by Notification No. 2 dated the 14th February, 1942.

¹ Form E. P. 15 (T).*Form of Rule 12, Schedule I, Excess Profits Tax Act Appeal.*

To

THE (INCOME-TAX) APPELLATE TRIBUNAL, NEW DELHI.

12 R.E.P.T.A.A. No.

of 19

—19 *

versus

APPELLANT.

RESPONDENT.

Province from which the appeal is filed.

Excess Profits Tax Officer making the order.

Substance of the order made under Rule 12

Date of the order.

Date on which the order of assessment affected by such adjustment was served on the appellant.

Postal address on which the appellant undertakes to receive notices.

Postal address on which notices should be issued to the respondent.

Relief claimed in appeal.

Grounds of Appeal.

Signed

(Appellant.)

Signed

(Authorised representative, if any).

Verification.

I, _____, the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the _____ day of _____ at _____.

Signed (_____).

N.B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and a copy of the grounds of appeal to the Tribunal.

* To be filled in by the office.

(1) This form was added by Notification No. 2 dated the 14th February, 1942.

**EXCESS PROFITS TAX (BOARDS OF REFEREES)
RULES, 1940.**

Notification No. 2 dated the 28th September, 1940.

In exercise of the powers conferred by sub-section (6) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules, namely :—

1. These rules may be called the Excess Profits Tax (Boards of Referees) Rules, 1940.

2. The Central Government shall, by notification in the Official Gazette, constitute a panel of persons eligible for appointment to a Board of Referees, and may in like manner, from time to time, nominate to, or remove from, the panel such persons as it thinks fit.

3. On receipt of an application under sub-section (3) of Section 6, or of an appeal under sub-section (5)¹ [or the proviso to sub-section (8), of Section 8, or under Rule 11 of Schedule 1,] of the Excess Profits Tax Act, 1940, the Commissioner shall appoint, subject to the provisions of sub-section (5) of Section 3 of that Act, a Board of Referees from the panel constituted under rule 2, and refer the application or the appeal, as the case may be, for the decision of the Board.

4. (1) If the applicant, or in the case of an appeal, any of the parties to the appeal, objects to the appointment of any particular member or members of the Board of Referees, and the Commissioner is satisfied that there are reasonable grounds for such objection, he may in his discretion cancel the appointment of such member or members to the Board and appoint an eligible person or persons instead.

Provided that no objection taken after the date of the first meeting of the Board fixed for hearing the application or the appeal shall be considered by the Commissioner.

(2) The decision of the Commissioner under sub-rule (1) shall be final.

5. The members of a Board of Referees shall elect their own chairman.

6. (1) The decision of the Board of Referees on any matter shall be according to the view of the majority of members present and shall be embodied in a report which shall be signed by all the members present:

Provided that any dissenting member may record a minute of dissent.

(2) Where the Board of Referees is equally divided, the chairman shall have a casting vote.

(3) No decision of the Board of Referees which is signed by less than half the members constituting the Board shall be valid.

7. The proceedings of a Board of Referees shall not be invalid merely by reason of the absence of a member.

(1) These words were substituted for the words "of Section 8" by Notification No. 3 dated 31st December 1940.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND THE UNITED KINGDOM) RULES.

Notification No. 18 dated the 21st June 1941.

In exercise of the powers conferred by sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules for the granting of relief in cases where, in respect of any profits of any business, Excess Profits Tax has been paid under that Act and Excess Profits Tax has been paid or, if there were no National Defence Contribution, would have been paid under the law in force in the United Kingdom.

1. These Rules may be cited as the Excess Profits Double Taxation (India and the United Kingdom) Rules.

2. In these Rules.—

(i) the expression “Indian excess profits tax” means any excess profits tax payable in accordance with the provisions of the Excess Profits Tax Act, 1940;

(ii) “United Kingdom excess profits tax” means any excess profits tax payable under the law in force in the United Kingdom, or, where National Defence Contribution and not Excess Profits Tax is payable, the amount of Excess Profits Tax that would be payable if there were no National Defence Contribution;

(iii) the expression “chargeable accounting period” has in British India the meaning assigned to it in sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in the United Kingdom the meaning assigned to it in Section 22 of the Finance (No. 2) Act, 1939.

3. Any reference in these Rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which, under the law in force in the United Kingdom, relief is to be given in respect of the payment of Indian Excess Profits Tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid, in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, United Kingdom excess profits tax—

(i) there shall be computed the amounts of excess profits tax which would be payable in British India and the United Kingdom respectively, if excess profits tax in the other country and National Defence Contribution in the United Kingdom were disregarded except in computing capital;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed;

(iii) if the amount so computed either for British India or for the United Kingdom is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be recalculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and the United Kingdom, the tax chargeable for such periods shall be apportioned on a time basis to co-terminous periods as hereinafter defined, and relief shall be allowed under these Rules for those periods.

For this purpose, except so far as the Central Board of Revenue and the Board of Inland Revenue otherwise agree,—

(a) the first of the co-terminous periods shall commence on the first day on which double taxation commenced, and each succeeding co-terminous period shall commence at the expiration of the period immediately preceding; and

(b) each of such co-terminous periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purpose of these Rules the liability to excess profits tax of a principal company of a group of interconnected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under this Notification shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in Rule 15 of the Excess Profits Tax Rules, 1940.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND CEYLON) RULES.

Notification No. 6 dated the 5th September 1942.

In exercise of the powers conferred by sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules for the granting of relief in cases where, in respect of any profits of any business, excess profits tax has been paid under that Act and excess profits duty has been paid in Ceylon :—

1. These rules may be cited as the Excess Profits Double Taxation (India and Ceylon) Rules.

2. In these rules the expression :—

(i) “excess profits tax”,

(a) so far as British India is concerned means any excess profits tax payable in accordance with the provisions of the Excess Profits Tax Act, 1940.

(b) so far as Ceylon is concerned means any excess profits duty payable in accordance with the law in force in Ceylon ;

(ii) “Chargeable Accounting Period” has in British India the meaning assigned to it in sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in Ceylon the meaning assigned to the expression “accounting period” in Section 2 of the Excess Profits Duty Ordinance, 1941 (Ceylon Ordinance No. 38 of 1941).

3. Any reference in these rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which under the law in force in Ceylon relief is to be given in respect of the payment of Indian excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, Ceylon excess profits tax :—

(i) there shall be computed the amount of excess profits tax which would be payable in British India and Ceylon respectively, if excess profits tax in the other country were disregarded except in computing capital ;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed ;

(iii) if the amount so computed either for British India or for Ceylon is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be re-calculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and Ceylon the tax chargeable for such periods shall be apportioned on a time basis to co-terminous periods as hereinafter defined, and relief shall be allowed under these rules for those periods.

For this purpose, except so far as the Government of India and the Government of Ceylon otherwise agree :—

(a) the first of the co-terminous periods shall commence on the first day on which double taxation commenced, and, each succeeding co-terminous periods shall commence at the expiration of the period immediately preceding ; and

(b) each of such co-terminous periods shall end at the end of the chargeable accounting period within which it commences, and, if the

chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of these rules the liability to excess profits tax of a principal company of a group of interconnected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these rules shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in Rule 15 of the Excess Profits Tax Rules, 1940.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND ADEN) RULES.

Notification No. 4 dated the 25th April 1942.

In exercise of the powers conferred by sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules for the granting of relief in cases where, in respect of any profits of any business, excess profits tax has been paid under that Act and excess profits tax has been paid in Aden :—

1. These rules may be cited as the Excess Profits Double Taxation (India and Aden) Rules.

2. In these Rules, the expression—

(i) "Indian excess profits tax" means any excess profits tax payable in accordance with the provisions of the Excess Profits Tax Act, 1940;

(ii) "Aden excess profits tax" means any excess profits tax payable under the law in force in Aden;

(iii) "chargeable accounting period" has in British India the meaning assigned to it in sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in Aden the meaning assigned to it in Section 18 of the Excess Profits Tax Ordinance, 1941 (Aden Ordinance No. 8 of 1941).

3. Any reference in these Rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which

under the law in force in Aden relief is to be given in respect of the payment of Indian excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, Aden excess profits tax—

(i) there shall be computed the amounts of excess profits tax which would be payable in British India and Aden respectively, if excess profits tax in the other country were disregarded except in computing capital;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed;

(iii) if the amount so computed either for British India or for Aden is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be recalculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and Aden the tax chargeable for such periods shall be apportioned on a time basis to co-terminous periods as hereinafter defined, and relief shall be allowed under these rules for those periods.

For this purpose, except so far as the Government of India and the Government of Aden otherwise agree—

(a) the first of the co-terminous periods shall commence on the first day on which double taxation commenced, and, each succeeding co-terminous period shall commence at the expiration of the period immediately preceding; and

(b) each of such co-terminous periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of these Rules the liability to excess profits tax of a principal company of a group of interconnected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these rules shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in rule 15 of the Excess Profits Tax Rules, 1940.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND COCHIN) RULES.*Notification No. 9 dated the 27th November 1943.*

In exercise of the powers conferred by sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following rules for the granting of relief in cases where, in respect of any profits of any business, excess profits tax has been paid under that Act and excess profits tax has also been paid in Cochin :—

1. These rules may be cited as the Excess Profits Double Taxation (India and Cochin) Rules.

2. In these Rules, the expression—

(i) “Indian excess profits tax” means any excess profits tax payable in accordance with the provisions of the Excess Profits Tax Act, 1940 ;

(ii) “Cochin excess profits tax” means any excess profits tax payable under the law in force in Cochin ;

(iii) “Chargeable accounting period” has in British India the meaning assigned to it in sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in Cochin the meaning assigned to it in clause (4) of Section 2 of the Excess Profits Tax Act (II of 1117).

3. Any reference in these Rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which under the law in force in Cochin relief is to be given in respect of the payment of Indian excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, Cochin excess profits tax—

(i) there shall be computed the amounts of excess profits tax which would be payable in British India and Cochin respectively, if excess profits tax in the other country were disregarded except in computing capital ;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed ;

(iii) if the amount so computed either for British India or for Cochin is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be recalculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and Cochin the tax chargeable for such periods shall be apportioned on

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a time basis to co-terminous periods as hereinafter defined, and relief shall be allowed under these rules for those periods.

For this purpose, except so far as the Government of India and the Government of Cochin otherwise agree—

(a) the first of the co-terminous periods shall commence on the first day on which double taxation commenced, and, each succeeding co-terminous period shall commence at the expiration of the period immediately preceding; and

(b) each of such co-terminous periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of these Rules the liability to excess profits tax of a principal company of a group of inter-connected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these rules shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in rule 15 of the Excess Profits Tax Rules, 1940.

EXCESS PROFITS TAX (POST-WAR-REFUNDS) RULES, 1942

Notification No. 3 dated the 18th April, 1942.

In exercise of the powers conferred by Section 10 of the Indian Finance Act, 1942 (XII of 1942), the Central Government is pleased to make the following rules, namely:—

1. (i) These Rules may be called the Excess Profits Tax (Post-war-Refunds) Rules, 1942.

* (ii) They apply to the whole of British India including those excluded and partially excluded areas to which the Indian Finance Act, 1942, has been or may hereafter be applied by notification under subsection (1) of Section 92 of the Government of India Act, 1935.

2. In these rules—

(i) "Excess Profits Tax Officer" means the Excess Profits Tax Officer having for the time being jurisdiction in regard to the person charged to excess profits tax;

(ii) "the Finance Act" means the Indian Finance Act, 1942 (XII of 1942);

* Sub-sec. (ii) was added by Notification No. 13 D of 17th July 1943.

(iii) "the Act" means the Excess Profits Tax Act, 1940 (XV of 1940);

(iv) "excess profits tax" means any excess profits tax charged under the Act at the rate of 66 $\frac{2}{3}$ per cent.

¹[(v) 'Chargeable accounting period' means chargeable accounting period as defined in sub-section (6) of Section 2 of the Act.]

²[(vi) "the Ordinance" means the Excess Profits Tax Ordinance, 1943 (No. XVI of 1943).]

³[3 (1). The Excess Profits Tax Officer shall give notice of the provisions of Section 10 of the Finance Act to each person who has been or may hereafter be assessed to excess profits tax at 66 $\frac{2}{3}$ per cent. for any chargeable accounting period ending not later than the 31st day of December 1942. Such notice shall be in Form E. P. 4-1 but in any case in which, when the Finance Act came into operation, excess profits tax notices of demand had already been issued, the notice shall be in Form E.P. 4-2.

(2) The notice required to be given under Section 2 of the Ordinance shall be—

(a) in respect of chargeable accounting periods ending before the 1st day of January 1944, in Form E. P. 4-1A;

(b) in respect of chargeable accounting periods ending after the 31st day of December 1943;

(i) where assessment is made under Section 14 of the Act, in Form E. P. 4-1B;

(ii) where assessment is made under Section 14A of the Act, in Form E. P. 4-7A.

(3) Notices in Form E. P. 4-1 shall be given at the time of issue of any notice of demand in respect of excess profits tax under Section 14 of the Act but notices in Form E. P. 4-2 shall be given forthwith.

4. When any excess profits tax charged is reduced, whether by appellate order of the Appellate Assistant Commissioner of Excess Profits Tax, the Appellate Tribunal, the High Court or His Majesty in Council or by a rectification order of the Commissioner of Excess Profits Tax under Section 20 of the Act, or by relief granted under Section 7 or 11 of the Act, and whether by refund or otherwise, and the deposit made under Section 10 of the Finance Act in relation thereto exceeds the maximum sum ⁴[permitted thereby, or the deposit made under Section 2 of the Ordinance exceeds the amount required thereby, the amount of the excess shall be refunded with interest at 2 per cent per annum from the date of deposit to the date of repayment.]

5. The Excess Profits Tax Officer shall record for each person who has been assessed to excess profits tax particulars of the amount charged for each chargeable accounting period, of any reduction thereof,

(1) Inserted by Notification No. 4 dated the 5th June 1943.

(2) Inserted by Notification No. 1-C. of 7th August 1943.

(3) Rule 3 was inserted *ibid* and sub-rule (2) was modified by Notification No. 1 of 15th April 1944.

(4) Inserted by Notification No. 10. dated 7th August 1943.

of any deposits made under Section 10 of the Finance Act [or under Section 2 of the Ordinance]¹ and of any refunds thereof.

6. In calculating the maximum amount that may be²[or is required to be] deposited under Section 10 of the Finance Act, ³[or under Section 2 of the Ordinance] fractions of a rupee are to be ignored.

⁴[7. So much of any excess profits tax as may be repayable under the provisions of sub-section (1) of Section 10 of the Finance Act shall be repaid within three years of the date of termination of the present hostilities :

Provided that, if the Central Government is satisfied that the whole or any part of the amount so repayable is required for an approved purpose, the Central Government shall, after taking such guarantee as it thinks fit for the proper utilisation thereof, repay the whole, or, as the case may be, part, of the amount within twelve months of the date of termination of the present hostilities.

Explanation.—In this rule, 'approved purpose' means any purpose which the Central Government may by general or special order declare to be an approved purpose.]

Form E. P. 4-1.

EXCESS PROFITS TAX.

Notice under Section 10 of the Finance Act, 1942.

To

The amount of excess profits tax payable by you at the rate of 66½ per cent. in respect of the chargeable accounting period commencing 194 and ending

194 having been determined to be the sum of Rs. as specified in the accompanying Notice of Demand given under Rule 5 of the Excess Profits Tax Rules and the date upon which such amount of excess profits tax is made payable being the day of 194 ;

TAKE NOTICE that if you desire to avail yourself of the provisions of Section 10 of the Finance Act, 1942, it is necessary that you

deposit with the Treasury Officer
Sub-Treasury Officer at _____ on or
Agent, Imperial Bank of India
Governor, Reserve Bank of India

(1) & (3) Inserted by *ibid.*

(2) Inserted by Notification No. 4 dated 5th June 1943.

(3) Inserted by Notification No. 1C. dated 7th August 1943.

(4) This rule was inserted by Notification No. 5 dated the 30th May 1942.

* Delete words that are inappropriate.

before the _____ day of _____ 194 , a sum not exceeding Rs. _____, when you will be granted a receipt. A Chalan is enclosed for the purpose.

} Excess Profits Tax Officer.

} Address.

Dated _____ 194 .

NOTE.—A copy of Section 10 of the Finance Act, 1942, is printed at the back hereof.¹

Form E. P. 4-1A.

EXCESS PROFITS TAX.

Notice under Section 2 of the Excess Profits Tax Ordinance, 1943, read with Section 10 of the Finance Act, 1942.

To

The amount of Excess Profits Tax payable by you at the rate of 66½ per cent. in respect of the chargeable accounting period commencing.....194 and ending.....194 having been determined to be the sum of Rs. _____ as specified in the accompanying Notice of Demand given under Rule 5 of the Excess Profits Tax Rules and the date upon which such amount of Excess Profits Tax is made payable being the _____ day of _____ 194 ;

Take Notice that you are required under the provisions of Section 2 of the Excess Profits Tax Ordinance, 1943, read with Section 10 of the Finance Act, 1942, to deposit with the

*Treasury Officer

Sub-Treasury Officer

Agent, Imperial Bank of India

Governor, Reserve Bank of India

at

on or before the day of

194 , the sum of Rs.

when you will be granted a receipt. A Chalan is enclosed for the purpose.

Excess Profits Tax Officer,
Address.

Dated _____ 194 .

FORM E. P. 4-1B—EXCESS PROFITS TAX.

Notice under Section 2 of the Excess Profits Tax Ordinance, 1943, read with Section 10 of the Finance Act, 1942.

To

.....

The amount of the Excess Profits Tax payable by you at the rate of 66½% in respect of the chargeable accounting period commencing...

(1) Section 10 of the Finance Act, 1942, is printed at p. 195 *supra*—Ed.

.....194 and ending.....194 having been determined to be the sum of Rsas specified in the accompanying Notice of Demand given under Rule 5 of the Excess Profits Tax Rules, and the date upon which that sum, less any payments made under the provisions of Section 14A of the Excess Profits Tax Act, 1940, being the day of 194

Take notice that you are required, under the provisions of Section 2 of the Excess Profits Tax Ordinance, 1943, to

deposit with the Treasury officer
Sub-treasury officer
Agent, Imperial Bank of India
Governor, Reserve Bank of India

at on or before the day of 194
 the sum of Rs. , arrived at as follows :—

Rs.
 †/64 of Rs. (the Excess Profits Tax payable) =
 Deduct amount provisionally deposited under Section 2 (1A) of the Excess Profits Tax Ordinance, 1943, viz., =

Sum now payable =

A chalan is enclosed for the purpose.

Excess Profits Tax Officer.

} Address.

Dated 194 .

[Form E. P. 4-7 has been printed at p. 217 *supra*—Ed.]

FORM E. P. 4-7A

“ As prescribed in Rule 6A of the Excess Profits Tax Rules, 1940 ”

Form E. P. 4-2.

EXCESS PROFITS TAX.

Notice under Section 10 of the Finance Act, 1942.

To

TAKE NOTICE that if you desire to avail yourself of the provisions of Section 10 of the Finance Act, 1942, in relation to the sum of Rs. Excess Profits Tax charged at the rate of 66½ per cent. in respect of the chargeable accounting period commencing 194 and ending 194, which as stated in the notice given under Rule 5 of the Excess Profits Tax

* Delete words that are inappropriate.

† Insert “ 19 ” or “ 17 ” as the case requires,

Rules issued to you on the _____ day of _____, 19____, you were required to pay to the

*Treasury officer

Sub-Treasury Officer

Branch of Imperial Bank of India

Reserve Bank

at _____ on or before _____ 194____, you must

deposit with the said

*Treasury Officer

Sub-Treasury Officer

Branch of Imperial Bank of India

Reserve Bank

not later than

1942 a further sum not exceeding Rs.

Excess Profits Tax Officer.

} Address.

Dated _____ 194____.

NOTE.—A copy of the relevant section of the Finance Act, 1942, is printed below¹.

NOTIFICATIONS.¹

EXCESS PROFITS TAX ESTABLISHMENTS.

Notification No. 30-C. A., dated September 14, 1940.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to be Inspecting Assistant Commissioners of Excess Profits Tax and assigns to every such officer the cases under the Excess Profits Tax Act, 1940, specified in the corresponding entries in the second column of the said Schedule.

SCHEDULE.

(1)

(2)

²[1. All persons performing for the time being the functions of Inspecting Assistant Commissioners of Income-tax in the Province of Bengal.

1. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax.]

³[1A. The person performing, for the time being, the functions of the Inspecting Assist-

1A. All cases in respect of which he is, for the time being, performing the functions of an

*Superfluous words should be deleted.

(1) Section 10 of the Finance Act, 1942, is printed at p. 195 *supra*.—Ed.

(2) Item No. 1 was substituted by Notification No. 26 dated 1st May 1941.

(3) Item No. 1-A was inserted by Notification No. 24 dated the 18th October 1941.

ant Commissioner of Income-tax in the jurisdiction of the Commissioner of Income-tax (Central), Calcutta.

Inspecting Assistant Commissioner of Income-tax.]

2. The person performing, for the time being, the functions of the Inspecting Assistant Commissioner of Income-tax, Central Range, Madras.
3. The person performing, for the time being, the functions of Inspecting Assistant Commissioner of Income-tax, Cawnpore.
4. The person performing, for the time being, the functions of Inspecting Assistant Commissioner of Income-tax, Nagpur.
5. The person performing, for the time being, the functions of the Inspecting Assistant Commissioner of Income-tax, Shillong.
6. Inspecting Assistant Commissioner of Income-tax, Central, Bombay.
7. All persons performing, for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Bombay, Sind, British Baluchistan and Ajmer-Merwara.
8. All persons performing, for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Punjab, N.W.F. and Delhi.
9. All persons performing, for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Bihar and Orissa.
2. All cases in the Province of Madras.
3. All cases in the United Province.
4. All cases in the Central Provinces.
5. All cases in the Province of Assam.
6. All cases in respect of which he is, for the time being, exercising the functions of an Inspecting Assistant Commissioner of Income tax.
7. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax.
8. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax.
9. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax.

Notification No. 31-C. A., dated September 14, 1940.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints every Commissioner of Income-tax appointed without reference to area under sub-section (2) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), to be a Commissioner of Excess Profits Tax and assigns to every such Commissioner of Excess Profits Tax the cases that may, for the time being, be assigned to him under sub-section (2) of Section 5 of the last mentioned Act.

Notification No. 32-C. A., dated September 14, 1940.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940, the Central Board of Revenue hereby appoints every Income-tax Officer under the Indian Income-tax Act, 1922, to be an Excess Profits Tax Officer and assigns to every such Excess Profits Tax Officer all cases in respect of which he is, for the time being, exercising the functions of an Income-tax Officer.

Notification No. 33-C. A., dated 14th September, 1940.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to be Appellate Assistant Commissioners of Excess Profits tax and assigns to every such officer the cases under the Excess Profits Tax Act, 1940, specified in the corresponding entries in the second column of the said Schedule.

SCHEDULE.

- | | |
|--|--|
| ¹ [1. All persons performing for the time being the functions of Appellate Assistant Commissioners of Income tax in the Province of Bengal. | 1. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.] |
| ² [2. The person performing, for the time being, the functions of the Appellate Assistant Commissioner of Income-tax within the jurisdiction of the Commissioner of Income-tax (Central), Calcutta. | 2. All cases in respect of which he is, for the time being, performing the functions of an Appellate Assistant Commissioner of Income-tax]. |
| ³ [3. The person performing, for the time being, the functions of Appellate Assistant Commissioner of Income-tax, Cawnpore. | 3. All cases in the United Provinces.] |

(1) Item No. 1 was substituted for original items 1 and 2 by Notification No. 5 dated 28th December, 1940.

(2) Item No. 2 was inserted by Notification No. 25 dated the 18th October 1941.

(3) Item No. 3 was substituted by Notification No. 11 dated 15th March, 1941, and again by Notifications No. 38-C, dated the 8th July 1941, and No. 1, dated 23rd Jan. 1943,

4. The person performing, for the time being, the functions of Appellate Assistant Commissioner of Income-tax, Nagpur.
5. The person performing, for the time being, the functions of the Appellate Assistant Commissioner of Income-tax, Dacca.
6. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax in the Province of Madras.
7. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax in the Provinces of Bombay, Sind, British Baluchistan and Ajmer-Merwara.
8. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax in the Provinces of Punjab, North-West Frontier and Delhi.
9. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax, in the Provinces of Bihar and Orissa.
4. All cases in the Central Provinces.
5. All cases in the Province of Assam.
6. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.
7. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.
8. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.
9. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.

Notification No. 34-C. A., dated 14th September, 1940.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940) the Central Board of Revenue hereby appoints every Commissioner of Income-tax appointed with reference to a specified area under sub-section (2) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), to be a Commissioner of Excess Profits Tax and assigns to every such Commissioner of Excess Profits Tax all cases in such area other than the cases assigned to a Commissioner of Excess Profits Tax who is, for the time being, exercising the functions of a Commissioner of Income-tax appointed without reference to area under sub-section (2) of Section 5 of the Indian Income-tax Act, 1922.

**Notification Relating to Commencement of Excess Profits
Tax Act, 1940.**

Notification No. 8 dated April 13, 1940.

In pursuance of sub-section (3) of Section 1 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to appoint the 13th day of April 1940 as the date on which the said Act shall come into force.

Notifications Applying Excess Profits Tax Acts to British Baluchistan.

Notification No. 13-W dated the 26th June 1940.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax Act, 1940 (XV of 1940), shall apply to British Baluchistan.

Notification No. 224 N dated the 19th December 1940.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Income-tax (Amendment) Act, 1940 (XL of 1940) and the Excess Profits Tax (Amendment) Act, 1940 (XLII of 1940) shall apply to British Baluchistan.

Notification No 51-F dated the 1st April 1941.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax (Amendment) Act, 1941 (XI of 1941), shall apply to British Baluchistan.

Notification No 207-F dated the 29th November 1941.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax (Second Amendment) Act, 1941, (XXIV of 1941), shall apply to British Baluchistan.

**Notification Applying Excess Profits Tax Rules, 1940, to the
District of Abu.**

Notification No. 11-C dated the 24th May 1941.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the District of Abu, and of all other powers enabling it in that behalf, the Central Board of Revenue is pleased to apply to the said District the Excess Profits Tax Rules, 1940, for the time being in force in British India, in so far as the said Rules may be applicable, subject to any amendments to which they are for the time being subject in British India and subject to the modification that references to British India shall be construed as references to the District of Abu.

**Excess Profits Tax Authorities for Cases Arising in the
District of Abu.**

Notification No. 3 dated the 25th January 1941.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the District of Abu, the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to be the Excess Profits Tax authorities specified in the corresponding entries in the second column thereof and assigns to them all cases under the said Act arising in the said District.

SCHEDULE.

- | | |
|--|--|
| 1. Commissioner of Income-tax, Bombay, Sind, British Baluchistan and Ajmer-Merwara. | Commissioner of Excess Profits Tax for Mount Abu. |
| 2. Appellate Assistant Commissioner of Income-tax of the Ahmedabad Range in Bombay, Sind and British Baluchistan. | Appellate Assistant Commissioner of Excess Profits Tax for Mount Abu. |
| 3. Inspecting Assistant Commissioner of Income tax, Northern Range of the Provinces of Bombay, Sind and British Baluchistan. | Inspecting Assistant Commissioner of Excess Profits Tax for Mount Abu. |
| 4. Income-tax Officer, Ahmedabad District in Bombay, Sind and British Baluchistan. | Excess Profits Tax Officer for Mount Abu. |

Notification Relating to Foreign Associations.

Notification No. 14 dated the 29th March 1941.

In pursuance of clause (8) of Section 2 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue declares all foreign associations which are for the time being declared to be "companies" under clause (6) of Section 2 of the Indian Income-tax Act, 1922 (XI of 1922), to be "companies" for the purposes of the first-mentioned Act.

Notifications Applying Indian Finance Acts 1941, 1942 & 1943, to British Baluchistan.

Notification No. 56-F dated the 8th April 1941.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor General in his discretion is pleased to direct that the Indian Finance Act, 1941 (VII of 1941) shall apply to British Baluchistan.

Notification No. 51-F dated the 7th April 1942.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to

direct that the Indian Finance Act, 1942, (XII of 1942) shall apply to British Baluchistan.

Notification No. 52-F dated the 21st April 1943.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Finance Act, 1943 (VIII of 1943), shall apply to British Baluchistan.

Notification Applying Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942, to British Baluchistan.

Notification No. 100-W dated the 3rd December 1942.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942 (Ordinance No. XL of 1942) shall apply to British Baluchistan.

Notification Applying Excess Profits Tax Ordinance, 1943, to British Baluchistan.

Notification No. 31-W. dated the 17th May 1943.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax Ordinance, 1943 (Ordinance No. XVI of 1943) shall apply to British Baluchistan.

Notification Applying Excess Profits Tax Rules to Central India Administered Areas.

Notification No. 7-D dated the 6th May 1944.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the Central India Administered Areas and of all other powers enabling in this behalf, the Central Board of Revenue is pleased to apply to the said Areas the Excess Profits Tax Rules, 1940, for the time being in force in British India, in so far as the said Rules may be applicable, subject to any amendments to which they are for the time being subject in British India and subject to the modification that references to British India shall be construed as references to the Central India Administered Areas.

Notification Applying Indian Finance Act, 1944, to British Baluchistan.

Notification No 71-F. dated the 10th April 1944.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Finance Act, 1944, shall apply to British Baluchistan.

THE INDIAN INCOME TAX ACT, 1922.

(Act XI of 1922).

[As applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940, and Rule 3 of the Excess Profits Tax Rules, 1940.]

4A. For the purposes of the Act—

Residence in British India.

(a) any individual is resident in British India in any year if he—

(i) is in British India in that year for a period amounting in all to one hundred and eighty two days or more; or

(ii) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year; or

(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit;

(b) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India; and

(c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

(iv) is in British India for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India for not less than three years from the date of his arrival.

Ordinary residence.

4-B. For the purposes of the Act—

(a) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years;

(b) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India;

(c) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.

10. (1) The tax shall be payable by an assessee under the head "profits and gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him.

Business.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

(i) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as a dwelling house by the assessee, the allowance under this clause shall be such sum as the *Excess Profits Tax Officer* may determine having regard to the proportional annual value of the part so used ;

(ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed ;

(iii) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid :

Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under Section 18 or in respect of which there is an agent in British India who may be assessed under Section 43 or, in the case of a firm, for any interest paid to a partner of the firm ;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause ;

(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid ;

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed ;

Provided that—

(a) the prescribed particulars have been duly furnished ;

(vii) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place;

(viii) in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

(ix) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business, profession or vocation;

(x) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

(a) the pay of the employee and the conditions of his service ;

(b) the profits of the business, profession or vocation for the year in question ; and

(c) the general practice in similar businesses, professions or vocations ;

(xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the *Excess Profits Tax Officer* may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year ;

(xii) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation ;

(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (ix) or clause (xii) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any

cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains; and nothing in clause (xii) of sub-section (2) shall be deemed to authorise—

(a) any allowance in respect of a payment which is chargeable under the head 'Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under Section 18; or

(b) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

(c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'.

(5) In sub-section (2), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section; 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and 'written down value' means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee;

(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under the Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886, was in force:

Provided that where the provisions of the proviso to sub-section (2) of Section 26 are applicable, the actual cost to the assessee referred to in clauses (a) and (b) shall be the actual cost to the person succeeded in the business, profession or vocation;

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) *Notwithstanding anything to the contrary in this section or in the Excess Profits Tax Act, 1940, the profits of any business of insurance, other than life insurance, shall be computed in accordance with the rules contained in the Schedule to the Indian Income-tax Act, 1922, in so far as they are applicable to such business.*

13. Income, profits and gains shall be computed, for the purposes of Section 10 * * in accordance with the method of accounting regularly employed by the assessee:

Method of ac-
counting.

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the *Excess Profits Tax Officer*, the income, profits and gains cannot

properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the *Excess Profits Tax Officer* may determine.

24-B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under *the Act* if he had not died.

(2) Where a person dies * * * before he is served with a notice under *sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1940*, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under *sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1940*, as the case may be, comply therewith, and the *Excess Profits Tax Officer* may proceed to assess the *excess profits* of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of *sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940*, or having furnished a return which the *Excess Profits Tax Officer* has reason to believe to be incorrect or incomplete, the *Excess Profits Tax Officer* may make an assessment of the *excess profits* of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of *sub-section (2) of Section 13 of the Excess Profits Tax Act, 1940*, have required from the deceased person.

29. When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of *the Act*, the *Excess Profits Tax Officer* shall serve upon the assessee or other person liable to pay such tax penalty or interest a notice of demand in the prescribed form specifying the sum so payable.

36. In the determination of the amount of tax or of a refund payable under *the Act* fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded, as one anna.

37. The *Excess Profits Tax Officer*, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of *Sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940*, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely :—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses, and any proceeding before an *Excess Profits Tax Officer*, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal under *Sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940*, shall be deemed to be a "judicial proceeding" within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

38. The *Excess Profits Tax Officer* or Assistant Commissioner

Power to call for may, for the purposes of the Act,—
information.

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;

(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than four hundred rupees, together with particulars of all such payments made.

39. The *Excess Profits Tax Officer* or Assistant Commissioner, or

Power to inspect
the register of mem-
bers of any com-
pany.

any person authorised in writing in this behalf by the *Excess Profits Tax Officer* or Assistant Commissioner, may inspect, and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

40. In the case of any agent of any person residing out of British

Guardians, trus-
tees and agents.

India, being entitled to receive on behalf of such person any profits chargeable under the *Excess Profits Tax Act, 1940*, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in British India and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly:

Provided that the tax may be levied upon and recovered from such non-resident person direct.

41. (1) In the case of income, profits or gains chargeable under

Courts of Wards
etc.

the Act which the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a trust

declared by a duly executed instrument in writing whether testamentary or otherwise, (including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of *the* Act shall apply accordingly :

* * * *

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

42. (1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing or arising within British India, and where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to *excess profits tax* either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of *the* Act, the assessee in respect of such *excess profits tax* :

Provided that where the person entitled to the income, profits or gains is not resident in British India, * * any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India :

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the *Excess Profits Tax Officer* a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount :

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident or not ordinarily resident in British India, carries on business with a person resident in British

India, and it appears to the *Excess Profits Tax Officer*, that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom, or which may reasonably be deemed to have been derived therefrom, shall be chargeable to *excess profits tax* in the name of the resident person who shall be deemed to be, for all the purposes of *the Act*, the assessee in respect of such *excess profits tax*.

(3) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India.

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the *Excess Profits Tax Officer* has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of *the Act*, be deemed to be such agent:

Agents to include persons treated as such.

Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions:

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the *Excess Profits Tax Officer* as to his liability.

44. Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Section 14 of the *Excess Profits Tax Act, 1940*, and for the amount of tax payable, and all the provisions of the said *Act* shall, so far as may be, apply to any such assessment.

Liability in case of a discontinued firm or association.

44-A. The provisions of the applied Sections 44 B and 44 C shall, notwithstanding anything contained in the other provisions of *the Act*, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the *Excess Profits*

Liability to tax of occasional shipping.

Tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of *this Act*.

44-B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of the *Return of profits and gains*, *applied Section 44-A* apply, the master of the ship shall prepare and furnish to the *Excess Profits Tax Officer* a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the *Excess Profits Tax Officer* shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the *Excess Profits Tax Officer* shall determine the sum payable as tax thereon * *, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-Collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

44-C. Nothing in *the applied Sections 44A and 44B* shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under *the applied Sections 44A and 44B*, that an assessment be made of *his actual excess profits in the chargeable accounting period*, and that the tax payable on the basis thereof be determined in accordance with the * * provisions of *the Act*, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

45. Any amount specified as payable in a notice of demand* *Tax when payable.* under Section 29 or an order under *sub-section (4) of Section 17 or Section 18 or Section 19 of the Excess Profits Tax Act, 1940*, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under *Section 17 of the Excess Profits Tax Act, 1940*, *Excess Profits Tax Officer* may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

Provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India,

the *Excess Profits Tax Officer* shall not treat the assessee as in default in respect of that part of the tax *which relates to excess profits arising from such income* as by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.

46. (1) When an assessee is in default in making a payment of *excess profits tax*, the *Excess Profits Tax Officer* may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(1-A) For the purposes of sub-section (1), the *Excess Profits Tax Officer* may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The *Excess Profits Tax Officer* may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908, a Civil Court has for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the *Excess Profits Tax Officer* may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(6) If the recovery of *excess profits tax* in any area has been entrusted to a Provincial Government under Section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that *excess profits tax* shall be recovered therein with, and as an addition to, any municipal

tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of Section 42, or of the proviso to Section 45, no proceedings for the recovery of any sum payable under *the Act* shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under *the Act* :

Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.

47. Any sum imposed by way of penalty under the provisions of sub-section (1) of Section 46 [and any interest payable under the provisions of sub-section (4), (6), (7) or (8) of Section 18-A]¹ or under the provisions of Section 10 or Section 16 of the *Excess Profits Tax Act, 1940*, shall be recoverable in the manner provided in the applied Sections 45 and 46 for the recovery of arrear of tax.

48. (1) If any person, to whose business the *Excess Profits Tax Act, 1940*, applies, satisfies the *Excess Profits Tax Officer* that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said *Act* for that period, he shall be entitled to a refund of any such excess.

(2) The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers, if satisfied to the like effect shall cause a refund to be made by the *Excess Profits Tax Officer* of any amount found to have been wrongly paid or paid in excess.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in *the Act*, to entitle any person to any relief other or greater than that relief.

49E. Where under any of the provisions of *the Act*, a refund is found to be due to any person, the *Excess Profits Tax Officer*, Appellate Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

49F. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of *the Act*, or to make a claim under Section 48 or under Section 7 or Section 11 of the *Excess Profits Tax Act, 1940*, is unable to receive such refund

(1) Inserted by the Income-tax (Amendment) Act, 1944.

or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

50 *No claim to any refund of tax under the Excess Profits Tax Act 1940, shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises.*

Limitation of claims for refund.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of *the Act*, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under *the Act* other than proceedings under *Sections 23, 24 and 25 of the Excess Profits Tax Act, 1940*, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of *the Act*, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

Disclosure of information by a public servant.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under *the Act*, or

(b) of any such particulars to any person acting in the execution of *the Act* where it is necessary to disclose the same to him for the purposes of *the Act*, or

(c) of any such particulars occasioned by the lawful employment under *the Act* of any process for the service of any notice or the recovery of any demand, or

(d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under *the Act*, or

(f) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit *excess profits tax* receipts or refunds, or

(g) of any such particulars, relevant to any inquiry into the conduct of an official of the *Excess Profits Tax* Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or

(gg) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with *excess profits tax* proceeding against a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 61, when exercising the functions referred to in that sub-section, or

(h) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or

(i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under Section 11 of the *Excess Profits Tax Act, 1940*, to be given, or

(j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(l) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

* * * * *

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

61. (1) Any assessee, who is entitled or required to attend before *the Appellate Tribunal* or any *Excess Profits Tax* authority in connection with any proceeding under the Act otherwise than when required under Section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ;

(ii) 'lawyer' means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in British India ;

(iii) 'accountant' means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditor's Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue ;

(iv) 'Income-tax practitioner' means—

(a) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;

(b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue ; or

(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1) ; and if any lawyer or registered accountant is found guilty of misconduct in connection with any *excess profits tax* proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of *Excess Profits Tax*, the Commissioner of *Excess Profits Tax* may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) :

Provided that—

(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.

Receipts to be given. 62. A receipt shall be given for any money paid or recovered under *the Act*.

63. (1) A notice or requisition under *the Act* may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

Service of notices. (2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of persons, be addressed to the principal officer thereof.

65. Every person deducting, retaining or paying any tax in pursuance of *the Act* in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

66. (1) Within sixty days of the date upon which he is served with notice of an order under *sub-section (3) of Section 10A, or sub-section (2) of Section 19 of, or sub-rule (2) of Rule 12 of Schedule I to, the Excess Profits Tax Act, 1940, read with sub-section (4) of Section 33 of the Indian Income-tax Act, 1922*, the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Statement of case by Appellate Tribunal to High Court,

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall

send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, *excess profits tax* shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

(7-A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (2) or sub-section (3).

(8) For the purposes of this section " the High Court " means—

(a) in relation to British Baluchistan, the High Court of Judicature at Lahore ;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad ; and

(c) in relation to th province of Coorg, the High Court of Judicature at Madras.

66A. (1) When any case has been referred to the High Court under Section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of Section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force :

References to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in

the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of Section 66 :

Provided, further, that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of Section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under *the* Act, and no prosecution, suit or other proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under *the* Act.

67-A. In computing the period of limitation prescribed for an appeal under *the* Act or for an application under Section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

INCOME TAX RULES, 1922.

[As applied to *Excess Profits Tax* by Rule 4 of the *Excess Profits Tax Rules, 1940.*]

[Rules 8, 23, 24, 33, 34, 44, 45 and 46 of the Income-tax Rules with the modifications shown here in italics, apply to *Excess Profits Tax* :—Ed.]

8. An allowance under Section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement :—

Class of asset.	Rate. Percentage on the written down value.	Remarks.
I. Buildings.—		
(1) First class substantial buildings of selected materials	2½	Double these rates will be allowed for factory buildings excluding offices, godowns, officers' and employees' quarters.
(2) Second class buildings of less substantial construction	5	
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections ...	7½	
(4) Purely temporary erections such as wooden structures ...	...	No rate is prescribed; renewals will be allowed as revenue expenditure.
II. Furniture and Fittings—		
(1) General	6	
(2) Rate for furniture and fittings used in hotels and boarding houses ...	9	
III. Machinery and Plant—		
(1) General rate ...	7	An extra allowance up to a maximum of 50%

of the normal allowance will be allowed by the *Excess Profits Tax Officer* where a concern claims such allowance on account of double or multiple shift working and satisfies the *Excess Profits Tax Officer* that the concern has actually worked double or multiple shifts. This extra allowance will be proportionate to the number of days during which double or multiple shifts are worked. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if for example a concern has worked double or multiple shifts for 100 days the extra allowance will be 1/3 of 50% of the normal allowance for the whole year. This applies to all concerns whether the general rate or any special rate applies to them but does not apply to an item of machinery or plant specifically excepted by the letters "N.E.S.A."† being shown against it.

† Letters "N.E.S.A." are a contraction of the expression "No extra-shift allowance."

Class of asset	Rate Percentage on the written down value	Remarks.
(2) Special rates to be applied to the whole of the machinery and plant used in the following concerns:		¹ The special rates specified herein-
after may be adopted at the option of the assessee for electrical machinery, air conditioning machinery, locomotives, rolling stock, tramways and railways, weighing machines, calculating machines, type-writers, Neo-post Franking machines, accounting machines, other office machinery, refrigeration plant, containers, etc., and motor vehicles used in these concerns.		
A.—(i) Flour Mills* (ii) Rice Mills (iii) Bone Mills (iv) Sugar Works* (v) Distilleries (vi) Ice Factories (vii) Aerating Gas Factories (viii) Match Factories (ix) Tea Factories (x) Shoe and other leather goods factories (xi) Starch Factories (xii) Coffee manufacturing concerns	9	*Replacements of Rollers will be allowed as revenue expenditure.
B.—(i) Paper Mills (ii) Strawboard Mills (iii) Ship building and Engineering works (iv) Iron and Brass Foundries (v) Aluminium Factories (vi) Electrical Engineering works (vii) Motor car repairing works (viii) Internal combustion Engines repairing works (ix) Galvanizing works (x) Patent stone works (xi) Oil extraction factories (xii) Chemical works (xiii) Soap and Candle works (xiv) Lime works (xv) Saw Mills (xvi) Tin and can making works (xvii) Dyeing and bleaching works (xviii) Cement works using rotary kilns (xix) Rod Mills (xx) Hydraulic Presses (xxi) Brick Manufacture (xxii) Tile making industry (xxiii) The manufacture of vegetable ghee (xxiv) The manufacture of optical instruments (xxv) Coke manufacture (xxvi) The manufacture of concrete pipes (xxvii) Glass manufacture and the manufacture of vacuum tubes and vacuum bulbs (xxviii) Telephone operating concerns (xxix) Wire and nail making mills (xxx) Iron and Steel industry (Blast furnace plant, steel-making plant, steel rolling plant, forges, generators, boilers and sheet mills).	10	

(1) These words were substituted by Notification No. 46 dated the 15th August 1942.

Class of asset.	Rate. Percentage on the written down value	Remarks.
(xxxii) Tanneries	10	
(xxxiii) Battery manufacture		
(xxxiii) The manufacture of Healds and Reeds (knitting, Reed-making, varnishing, doubling, winding and polishing machines)		
*[(xxxiv) The manufacture of confectionary including biscuits and peppermints.]		
C.—(i) Rubber goods factories—		
(a) General machinery and plant	12	
(b) Moulds (N.E.S.A.)	40	
D.—(i) Silk manufacturing—weaving machinery worked by electric motors including winding machines, twisting frames, doubling machines, prin winding machines, warping machines, looms, steentering machines and hydro-extractors.	12	
(3) Special rates to be applied to other machinery and plant—		
A.—Ropeway structures (N.E.S.A.)—		
(i) Trestle and Station steel work	6	
(ii) Driving and tension gearing	10	
(iii) Carriers	12	
(iv) Ropeway ropes and trestle sheaves and connected parts.	30	
B.—Salt works—		
(i) Machinery, plant, locomotives, wagons and rolling stock.	10	
(ii) Barges and floating plant (N.E.S.A.)	10	
(iii) General plant and machinery used in Engineering shops	10	
(iv) Reservoirs, condensers, salt pans, delivery channels and piers, if constructed of masonry, concrete cement asphalt or similar materials (N.E.S.A.)	6	
(NOTE).—Repairs to similar works made of earth will be allowed as revenue expenditure.		
(v) Piers, quays and jetties constructed entirely or mainly of steel (N.E.S.A.)	7.5	
(vi) Piers, quays and jetties constructed entirely or mainly of wood (N.E.S.A.)	12	
(vii) Pipe lines for conveying brine if constructed of masonry, concrete cement, asphalt or similar materials (N.E.S.A.)	12	
C.—Electrical machinery—		
(i) Batteries	20	
(ii) Other electrical machinery including electrical generators and motors (other than tramway motors)	10	
(iii) Switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations (N.E.S.A.)	10	
(iv) Under-ground cables and wires (N.E.S.A.)	7.5	
(v) Over-head cables and wires (N.E.S.A.)	5	
(vi) X-Ray and Electro-therapeutic apparatus and accessories thereto (N.E.S.A.)	30	

* Inserted by Notification No. 20 of 21-2-42

Class of asset.	Rate. Percentage on the written down value	Remarks.
D.—Machinery used in the production and exhibition of cinematograph films—(N.E.S.A.) ...		
(i) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights.*	20	* Renewals of Bulbs of Studio lights will be allowed as revenue expenditure
(ii) Projecting equipment of film exhibiting con-	20	
E.—Electric supply undertakings—		
(i) Electric plant, machinery, boilers	10	
(ii) Hydro-electric concerns—hydraulic works, pipe lines and sluices (N.E.S.A.)	2·5	
F.—Electric tramways—		
(i) Permanent way (N.E.S.A.)		
(a) Not exceeding 50,000 car miles per mile of track per annum	9	
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum	10	
(c) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum	12	
(d) Exceeding 1,25,000 car miles per mile of track per annum	15	
(ii) Cars—car trucks, car bodies, electrical equipment and motors (N.E.S.A.)	10	
(iii) General plant, machinery and tools	9	
G.—Tramways run by internal combustion engines (N.E.S.A.)—		
(i) Permanent way	...	The same rates as have been prescribed for the permanent way of electric tramways.
(ii) Trams including engines and gears	10	
H.—Mineral oil concerns (N.E.S.A.)		
Refineries—		
1. Boilers	10	
2. Prime movers	10	
3. Process plant	12	
Field Operations—		
1. Boilers	10	
2. Prime movers	10	
3. Process plant	12	
except for the following items—		
1. Below ground	100	
2. Above ground—		
(a) Portable boilers, drilling tools, well-head tanks, rigs etc.	30	
(b) Storage tanks	10	

Class of asset.	Rate. Percentage on the written down value	Remarks.
(c) Pipe lines—		
(i) Fixed boilers ...	10	
(ii) Prime movers ...	12	
(iii) Pipe line ...	10	
Distribution—		
1. Returnable packages ...		Cost of packages actually used up will be allowed as revenue expenditure.
2. Kerbside pumps including under-ground tanks and fittings, ...	15	
I.—Ships (N.E.S.A.)—		
(i) Ocean—		
(a) Steamers [and Motor Vessels ¹] ...	b	} ¹ [These rates are percentages on the original cost. For (1) the increased rate of depreciation on ocean-going steamers and motor vessels due to war-time conditions, (2) the rate of depreciation on second-hand ocean-going steamers and motor vessels, and (3) the rate of depreciation on additions to ocean-going steamers and motor vessels—See Appendix A.]
(b) Sail or tug ...		
(ii) Inland—		
(a) Steamers [and Motor Vessels ¹] ...	10	
(b) Tug boats ...	12½	
(c) Iron or Steel flats for cargo ...	10	
(d) Wooden cargo boats up to 50 tons capacity ...	10	
(e) Wooden cargo boats over 50 tons capacity ...	10	
(f) Motor launches ...	12½	
(g) *Speed boats ...		
J.—Mines and quarries (N.E.S.A.)—		
(i) Machinery—		
(a) Surface and underground machinery (except electrical machinery) head gear, moving parts and rails ...	15	
(b) Boilers and head gears (excluding moving parts) ...		
(ii) Coal tubs, winding ropes, haulage ropes and sand stowing pipes ...		Renewals will be allowed as revenue expenditure.
(iii) Shafts and inclines ...	7	
(iv) Portable under-ground machinery ...	25	
(v) Safety lamps ...		Cost of lamps actually used up will be allowed as revenue expenditure.
(vi) Tramways on the surface ...	10	
K.—Aeroplanes (N.E.S.A.)—		
(i) Aircraft ...	30	
(ii) Aero-engines ...	40	
(iii) Aerial photographic apparatus ...	25	

* "Speed Boat" means a motor-driven boat by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane, i.e., its bow will rise from the water.

(1) These words were substituted by Notification No. 46 dated the 16th August 1942.

Class of asset.	Rate. Percentage on the written down value.	Remarks.
L.—(i) Textile machinery excluding silk manufacturing machinery—		
(a) Cotton	10	
(b) Jute excluding generating plant	9	
(c) Wollen and Worsted	10	
(d) Carpet	10	
(ii) Ginning and pressing machinery	9	
M.—(i) Air compressors and pneumatic machinery		
(ii) Electro-plating and Electro-welding plant		
(iii) Newspaper production plant and machinery		
(iv) Air conditioning machinery	10	
(v) Locomotives, rolling stock, tramways, and railways used by concerns excluding railway concerns (N.E.S.A.)		
N.—(i) Tube well boring plant		
(ii) Concrete pile driving machines		
(iii) Weighing machines (N.E.S.A.)		
(iv) Works Instruments	11	
(v) Automatic and semi-automatic machine tools		
(vi) Precision machine tools, <i>e.g.</i> , grinding machines		
O.—(i) Calculating machines (N.E.S.A.)		
(ii) Typewriters (N.E.S.A.)		
(iii) Neo Post Franking Machines (N.E.S.A.)		
(iv) Accounting machines (N.E.S.A.)		
(v) Other office machinery (N.E.S.A.)		
(vi) Sewing and knitting machines employed in the manufacture of hosiery and woollen goods		
(vii) Sewing and stitching machines for canvas or leather		
(viii) Hand or automatic embroidery machines and their accessories (N.E.S.A.)		
(ix) Refrigeration plant, containers, etc. (N.E.S.A.)	15	
(x) Road making plant and machinery		
(xi) Artificial silk manufacturing machinery*		
(xii) Surgical instruments (N.E.S.A.)		
(xiii) Wireless apparatus and gear, wireless appliances and accessories (N.E.S.A.)		
(xiv) Building contractors' machinery (N.E.S.A.)		
P.—(i) Indigenous sugar cane crushers (Kohlus and Belans) (N.E.S.A.)	18	
Q.—(i) Motor cars (N.E.S.A.)	20	
R.—(i) Moulds used in the manufacture of concrete pipes (N.E.S.A.)	25	
(ii) Motor taxis, motor lorries, motor buses and motor tractors (N.E.S.A.)	25	
S.—(i) Railway sidings (N.E.S.A.)	7	

* Replacement of wooden parts of plant and machinery will be allowed as revenue expenditure.

APPENDIX A.*

1. *Increased rate of depreciation on ocean-going steamers and motor vessels due to war-time conditions.*—The rate of depreciation allowable on ocean-going steamers and motor vessels will be increased from 5 per cent to 6.25 per cent per annum for the period commencing 1st September 1939 and ending six months after the cessation of the present hostilities,—the date whereof will be notified. This increase will affect years of assessment 1940-41 onwards. In order to secure that all shipping concerns receive the increased allowance for the same length of time, the allowance for the year of assessment 1940-41 will have reference to the proportions falling before and after the end of August 1939 of the trading year which is the "previous year" for Income-tax purposes for that year of assessment.

Example 1.

If the "previous year" was the calendar year 1939, the depreciation allowance for the year of assessment 1940-41 will be computed at the rate of 5 per cent for 8 months and at 6.25 per cent for 4 months.

Example 2.

If the "previous" year were the year ending 31st March 1940, the allowance will be computed at the rate of 5 per cent for 5 months and at 6.25 per cent for 7 months.

If the assessment for 1940-41 has been closed, then where that assessment has been made at nil due to the depreciation allowances not being entirely wiped off, the additional allowance due for that year under this paragraph will be deducted from the profit assessable for the year 1941-42 and in any other case an adjustment will be made in the tax demand for 1941-42 equal to the difference in the tax demand which would have resulted if the additional allowance had been given in the assessment for 1940-41.

2. *The rate of depreciation on second-hand ocean-going steamers and motor vessels.*—In the case of a steamer or motor vessel purchased second hand the normal allowance will be computed by reference to the actual cost of the steamer or the motor vessel concerned to the new owner and its reasonable expectation of life at the date of purchase. The new rate and the method of computation will have effect from the assessment for 1941-42 and not from any earlier assessment.

The following scale is to be used to determine the fractional part of the cost of a steamer or motor vessel that is to be allowed year by year as depreciation for Income-tax purposes, *except* where at the date of purchase the steamer or the motor vessel concerned is more than 24 years old. In such a case the rate of depreciation to be allowed will be decided by the Central Board of Revenue on the facts of each case:—

* Appendix A was inserted by Notification No. 46 dated the 15th August 1942.

Age at date of purchase.		Expectation of life.	Fractional part of cost to be allowed as depreciation each year.
Over years.	Under years.	Years	
0	1	20	1/20
1	2	19	1/19
2	3	18	1/18
3	4	17	1/17
4	5	16	1/16
5	6	15	1/15
6	7	14	1/14
7	8	13	1/13
8	9	12	1/12
9	10	11	1/11
10	11	10	1/10
11	12	9	1/9
12	13	9	1/9
13	14	8	1/8
14	15	8	1/8
15	16	7	1/7
16	17	7	1/7
17	18	7	1/7
18	19	6	1/6
19	20	6	1/6
20	21	5	1/5
21	22	5	1/5
22	23	4	1/4
23	24	4	1/4

The scale given above having been applied to find the normal allowance, the extra allowance for war-time conditions will be given on the lines laid down in paragraph 1 above. As the increased allowance for a new vessel is one-fourth of the normal 5 per cent of cost, the addition in the case of second-hand steamers or motor vessels is to be taken as $\frac{1}{4}$ of the normal allowance computed by application of the scale.

Example.

A vessel 12 years old was purchased at the commencement of the 'previous year' to year of assessment 1937-38 for Rs. 5,00,000. According to the scale the 'expectation of life' at the date of its purchase second-hand was 9 years.

For the years of assessment 1941-42 onwards the depreciation allowance would be $\frac{1}{9}$ of Rs. 5,00,000 = Rs. 55,555.

For years of assessment corresponding to previous years that are chargeable accounting periods for Excess Profits Tax purposes the war-time addition of $\frac{1}{4}$ referred to in paragraph 1 will be added.

3. *Depreciation on additions to ocean-going steamers and motor vessels which are treated as of a capital nature for Income-tax purposes.*—Any expenditure which has been treated as capital for Income-tax purposes (e.g., the installation of refrigerating plant or the renewal of engines or boilers) will be added to the prime cost of the steamer or the motor vessel concerned for the purpose of computing depreciation allowance.

The annual allowance in respect of such expenditure will be calculated as follows :—

(a) if the expenditure is or was made before the expiration of the 20 years estimated life of the steamer or the motor vessel, the normal allowance for it will be increased by such a sum as will exhaust or would have exhausted the expenditure over the remaining years of 20 years estimated life;

Example.

An addition of Rs. 60,000 was made to a vessel at the expiration of 17 years of its life. The normal allowance for the addition will be $\frac{3}{5}$ of Rs. 60,000 = Rs. 20,000 for each of the remaining three years of the vessel's 20 years estimated life.

(b) if the expenditure is or was incurred when the vessel is 20 years old or more, the allowance will be such a sum as will exhaust or would have exhausted the expenditure over the further estimated years of life that would be given by applying the table in paragraph 2 above, if for "age at date of purchase" there were substituted "age at date of the capital expenditure";

Example.

An addition of Rs. 60,000 was made to a vessel 22 years old. The further estimated life of the vessel, according to the table in paragraph 2 is 4 years. The normal allowance for the addition will, therefore, be $\frac{1}{4}$ of Rs. 60,000 = Rs. 15,000 for each year of the further estimated life of the vessel.

(c) in respect of a vessel purchased second-hand, the normal allowance for the expenditure on additions to such a vessel will be increased by such a sum as will exhaust or would have exhausted the expenditure over the remaining years of the estimated life of the vessel given in the Table in paragraph 2 above.

Example.

A vessel was over 8 years and below 9 years old when purchased second-hand so that its expectation of life at the date of purchase second-hand was 12 years. After the lapse of 7 years of this expectation of life an addition of Rs. 60,000 was made to it. The normal allowance for the addition will be $\frac{1}{5}$ of Rs. 60,000 = Rs. 12,000 for each of the remaining five years of the expected life of the vessel.

The increased allowances so calculated will be allowed for the years of assessment 1941-42 onwards. The extra allowance for war time conditions will also be given on the lines laid down in paragraph 1 above, but the aggregate allowances on the additions shall not exceed the cost thereof.

23. (1) In the case of income which is partially agricultural income as defined in Section 2 and partially income chargeable to *excess profits tax* under the head 'Business', in determining that part which is chargeable to *excess profits tax* the market value of any agricultural produce which has been raised by the assessee or received by him as rent in kind and which has been utilized as raw material in such business or the sale receipts of which are included in the accounts of the

business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be:—

(a) Where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made.

(b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation ;

(2) the land revenue or rent paid for the area in which it was grown ; and

(3) such amount as the *Excess Profits Tax Officer* finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce.

24. Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax :

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned.

33. In any case in which the *Excess Profits Tax Officer* is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India or through or from any property in British India, or through or from any money lent at interest and brought into British India in cash or in kind cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to *excess profits tax* may be calculated on such percentage of the turnover so accruing or arising as the *Excess Profits Tax Officer* may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipts so accruing or arising bear to the total receipts of the business, or in such other manner as the *Excess Profits Tax Officer* may deem suitable.

34. The profits derived from any business carried on in the manner referred to in Section 42 (2) of the Act may be determined for the purposes of assessment to *excess profits tax* according to the preceding rule.

44. The following bodies are recognised by the Central Board of Revenue as associations of accountants for the purposes of clause (iii) of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922 :—

1. The Institute of Chartered Accountants in England and Wales;
2. The Society of Accountants in Edinburgh;
3. The Institute of Accountants and Actuaries in Glasgow;
4. The Society of Accountants in Aberdeen;
5. The Institute of Chartered Accountants in Ireland;
6. The Society of Incorporated Accountants and Auditors, London.

45. The following accountancy examinations are recognised by the Central Board of Revenue for the purpose of sub-clause (b) of clause (iv) of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922.—

1. Government Diploma in accountancy examination conducted by the Accountancy Diploma Board, Bombay;
2. Diploma in commerce issued under the authority of the Provincial Governments in Madras, Bengal, Punjab and Delhi;
3. The first Examination conducted by the Central Government under the Auditor's Certificates Rules, 1932.
4. Examinations conducted by the Association of Certified and Corporate Accountants, London.

46. The following educational qualifications are prescribed by the Central Board of Revenue for the purposes of sub-clause (c) of clause (iv) of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922 :—

A degree in Commerce, Law, Economics or Banking including Higher Auditing conferred by any of the following Universities :—

I. *Indian Universities*.—Any Indian University incorporated by any law for the time being in force.

II. Rangoon University.

III. *English and Welsh Universities*.—The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales.

IV. *Scottish Universities*.—The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews.

V. *Irish Universities*.—The Universities of Dublin (Trinity College) and the Queen's University, Belfast.

STATUTES.

EXCESS PROFITS DUTY ACT, 1919.

(ACT NO. X OF 1919).

*(Received the assent of the Governor-General on the
20th March, 1919).*

An Act to impose a duty on excess profits arising out of certain businesses.

Whereas it is expedient to impose a duty on excess profits arising out of certain businesses; it is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Excess Profits Duty Act, 1919.

(2) It shall come into force on the 1st April, 1919.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

“accounting period” means the twelve months ending on the 31st March, 1919, or if the accounts of the business have been made up within the said twelve months for the purposes of the Indian Income-tax Act, 1918, in respect of a year ending on any date other than the said 31st March, then the year ending on that other date;

“business” includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture;

“Chief Revenue-authority” means the Board of Revenue or the Financial Commissioner in provinces where those authorities exist, and in any other case such authority as the Local Government may declare to be the Chief Revenue-authority for the purposes of this Act;

“prescribed” means prescribed by rules made under this Act.

All expressions used or embodied by reference in this Act which are not hereinbefore defined shall have the same meaning as is attributed to them by the Indian Income-tax Act, 1918.

3. This Act shall apply to every business (other than the businesses specified in Schedule I) which is, during any part of the accounting period, either carried on in British India by any person or owned or carried on in any place in India by a person ordinarily resident in British India.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits in the accounting period exceed the standard profits, a duty (in this Act referred to as “excess profits duty”) of an amount equal to fifty per cent. of that excess;

Provided that the amount of the said duty shall not exceed such sum as would reduce the profits in the accounting period below thirty thousand rupees.

5. The profits of a business in the accounting period shall, at the option of the person by whom the excess profits duty in respect of that business is payable, be or be deemed to be,—

Ascertainment of profits in the accounting period.

(a) The taxable income as finally ascertained for the purposes of the Indian Income-tax Act, 1918, or

(b) When the accounting period in respect of the business ends on any date other than the 31st March, 1919, and the accounts of the business are made up for an additional period ending on the said 31st March, a sum which bears the same proportion to the taxable income of the total period (such taxable income being ascertained as nearly as may be in accordance with the provisions of the said Act) as a period of one year bears to the total period.

Explanation.—The profits in the accounting period shall, notwithstanding any composition in force for the purposes of the said Act, be actually ascertained in accordance with the provisions of that Act.

6. (1) The standard profits of a business shall be as follows:—

Standard profits.

(a) an amount calculated at the rate of 10 per cent or at such rate not being less than 10 per cent as may be prescribed on the capital of the business as existing at the end of the accounting period, in which case the capital of the business shall, for the purposes of this Act, be ascertained in accordance with the provisions of Schedule II; or

(b) at the option of the person by whom excess profits duty in respect of the business is payable—

(i) if the profits of the business have been assessed in the years 1913 and 1914 for the purposes of the income-tax law then in force—the aggregate of half of the profits so assessed and half of the interest if any, received in those years on securities forming part of the assets of the business; or

(ii) if the profits of the business have been assessed for the said purposes in the years 1913 and 1914, and in two only of the three years 1915, 1916 and 1917—the aggregate of one-fourth of the profits so assessed and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business; or

(iii) if the profits of the business have been assessed for the said purposes in all the five years 1913, 1914, 1915, 1916 and 1917—the aggregate of one-fourth of the profits assessed in the years 1913 and 1914 and in such two of the years 1915, 1916 and 1917 as may be selected by the said person and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business:

Provided that if the average capital employed in the business in the years adopted for the purpose of determining the standard profits is less or more than the capital so employed at the end of the accounting

period, there shall be made to or from the standard profits an addition or a deduction, as the case may be, which shall bear to the standard profits the same proportion, as such increase or decrease of capital bears to the average capital so employed in the years so adopted.

Explanation.—For the purpose of ascertaining the average capital employed, the capital employed in the business in any year shall be deemed to be the capital so employed at the end of that year :

Provided further that if the assessment in any of the said years was made in respect of a period of less than twelve months, that assessment shall, for the purpose of determining the standard profits, be proportionately increased.

(2) If a composition for income-tax was in force in any of the years 1913, 1914, 1915, 1916 and 1917, such composition shall be deemed for the purposes of clause (b) of sub-section (1) to have been the assessment, and the profits shall be determined in accordance therewith :

Provided that the person by whom excess profits duty in respect of the business is payable shall, notwithstanding any such composition, be entitled to have an assessment of the profits of the business made for the purpose of determining the standard profits, in the same way as the assessment would have been made if no such composition had been agreed upon.

(3) Each of the years referred to in sub-sections (1) and (2) shall be deemed to be the twelve months commencing with the 1st of April in the year mentioned.

(4) Notwithstanding anything contained in this section no increase of capital made after the 31st December, 1918, shall be taken into account in any case, and no such increase before that date shall be taken into account when it appears or to the extent to which it appears that the increase was made with intent to evade or has the effect of evading the payment of the excess profits duty.

7. On the application (made in accordance with the provisions of clause (b) of sub-section (2) of Section (11)) of any person chargeable with excess profits duty alleging that owing to any of the following circumstances, namely :—

Power to Collector to make allowances for special circumstances.

(a) any change in the constitution of a partnership of which he is or was a member,

(b) any postponement or suspension, as a consequence of the present war, of renewals or repairs,

(c) any exceptional depreciation or obsolescence (including the cost of replacement during the accounting period), due to the present war, of assets employed in the business,

(d) the provision, in connection with the requirements of the present war, of plant or machinery which will not be required for the purposes of the business after the termination of the war,

(e) the fact that the assets of the business consist to any material extent of shares in a company the business of which is itself chargeable to excess profits duty,

(f) the liability of any part of the profits of the business to excess profits duty in the United Kingdom, or

(g) any special circumstances connected with the nature of the business or the period for which any profits are ascertained or determined,

the provisions of this Act for the calculation of excess profits duty operate unfairly in his case, the Collector may make such allowances in calculating the amount of the duty as seem to him to be necessary to meet the special circumstances, provided that any such allowance shall not reduce the amount of duty payable under the provisions of the Act by more than 25 per cent. without the previous sanction of the Commissioner.

8. (1) If any person who has applied under Section 7 is dissatisfied with the decision of the Collector on his application, he may appeal to the Chief Revenue authority which shall, at the option of such person, either itself decide such appeal or refer it to a Board of Referees to be appointed by the Local Government. The Board shall hear and consider any appeal so referred and shall communicate its decision to the Chief Revenue authority.

(2) The Chief Revenue authority and the Board shall be entitled to take into account any of the circumstances specified in Section 7, and to modify the decision of the Collector with reference thereto in such way and to such extent as they may consider just and equitable.

(3) Every Board of Referees appointed under this section shall consist of three or, in cases which the Local Government considers to be of difficulty or importance, of four persons. When the Board consists of four persons, the Local Government shall appoint one of the members to be Chairman. In any case at least two members of the Board shall be persons not in the service of Government and having in the opinion of the Local Government adequate business experience.

(4) In cases of a difference of opinion between the members of the Board, the opinion of the majority shall prevail. When the Board consists of four members and the members are equally divided in opinion, the Chairman shall have a second or casting vote.

(5) The decision of the Chief Revenue authority on any appeal under this section or of the Board where an appeal is referred to it shall, notwithstanding any other provision of this Act, be final, and shall be deemed to be the basis of assessment in the particular case.

9. (1) The Governor-General in Council may, on the application made before the 30th June, 1919, of any person alleging that owing to special circumstances to be stated in the application the provisions of this Act for the calculation of excess profits duty would operate unfairly in the case of any class of business in which such person is engaged, refer such application for the report of a Board of Special Referees to be appointed in this behalf by the Governor-General in Council.

Power of Governor-General in Council to deal with hardship in case of a class of business.

(2) Every Board appointed under this section shall consist of four persons, of whom at least two shall be persons not in the service of Government. The Governor-General in Council shall appoint one member to be Chairman.

(3) On receipt of the report of the Board, the Governor-General in Council shall consider the same and pass thereon such orders as he thinks fit. Any such order may vary the basis or method of assessment in respect of the class of business so reported on, and any variations so made shall be deemed to be modifications of this Act in respect of the matters to which they relate, and this Act shall apply accordingly.

10. Every liquidator of a company which is being wound up at the commencement of this Act or is wound up after the commencement of this Act and which is chargeable to excess profits duty shall before the 31st May, 1919, or within two months of the commencement of the winding-up, as the case may be, give notice of the fact to the Collector.

Notice to be given
by liquidator that
excess profits have
been made

11. (1) The Collector may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during the accounting period or in the year ending on the 31st March, 1912, or on the 31st March in any year thereafter, to furnish him within two months after service upon him of a notice to that effect with such particulars in connection with the business as the Collector may require.

Returns for the
purposes of the Act.

(2) At the time of furnishing such particulars such person shall—
(a) state the method which he desires to be adopted for the purpose of—

(i) ascertaining the profits of the business in the accounting period under Section 5, and

(ii) determining the standard profits under Section 6, and

(b) make any application which he desires to make under Section 7 for an allowance in the calculation of the amount of the excess profits duty.

(3) Where any person fails, without reasonable cause or excuse, to comply with the provisions of clause (a) of sub-section (2), the Collector shall proceed to ascertain the profits of the accounting period and to determine the standard profits by such method provided in this Act as he thinks fit.

12. If a person fails, without reasonable cause or excuse, to give to the Collector in due time any notice required by Section 10 or to furnish any particulars referred to in Section 11, he shall on conviction by a Magistrate be punishable with fine which may extend to thirty rupees for every day during which the default continues.

Penalty.

13. The amount of excess profits duty to be paid in respect of any business shall be assessed by the Collector, who may in any case where he thinks fit allow the duty to be paid in instalments of such amounts payable at such times as he may direct.

14. The duty may be assessed on any person for the time being owning or carrying on the business whether as agent for the owner or otherwise or, where the business has ceased during the accounting period, on the person who owned or so carried on the business immediately before the time at which the business ceased, and where there has been a change of ownership of the business during the accounting period, the Collector shall make the assessment in the prescribed manner.

15. The provisions of Sections 20, 21, 22, 23, 24, 26, 27, and of Chapters IV and V and of Sections 42, 45, 46, 47 and 49 to 52 of the Indian Income-tax Act, 1918, shall apply, with such modifications, if any, as may be prescribed, as if the said provisions referred to excess profits duty instead of to income-tax, and every officer or authority exercising powers under the said provisions may exercise the like powers under this Act in regard to excess profits duty as he or it exercises in regard to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person by whom excess profits duty is payable.

16. Notwithstanding anything contained in the Indian Income-tax Act, 1918, or in any Act repealed thereby, all information contained in any statement or return made or furnished under the provisions of any of the said Acts or obtained or collected for the purposes of any such Act may be used for the purposes of this Act.

17. (1) A person shall not for the purposes of avoiding payment of excess profits duty enter into a fictitious or artificial transaction or carry out any fictitious or artificial operation, and if he had entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Collector of the nature of the transaction or operation.

Explanation.—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purposes of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) If any person acts in contravention of, or fails, without reasonable cause or excuse, to comply with the provisions of sub-section (1), he shall on conviction by a Magistrate be punishable with fine which may extend to one thousand rupees.

18. (1) The Governor-General in Council may, by notification in the Gazette of India, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the rate to be allowed in respect of any business or class of business for the purpose of clause (a) of sub-section (1) of Section 6;

(b) the procedure to be followed by Boards of Referees appointed under this Act;

(c) the basis and method of assessment when there has been a change of ownership during any period which can be selected for the purpose of determining standard profits, or during any subsequent period prior to the commencement of this Act; and

(d) the adaptation to excess profits duty of any of the provisions of the Indian Income-tax Act, 1918, which are made applicable to that duty by Section 15.

(3) All rules made under this section shall have effect as if enacted in this Act.

19. Where the profits of any business in the accounting period are chargeable to excess profits duty under the provisions of this Act and to super-tax under the provisions of the Super-tax Act, 1917, then—

(1) if the amount chargeable as excess profits duty exceeds that chargeable as super-tax, excess profits duty shall alone be charged, and

(2) if the amount chargeable as super-tax exceeds that chargeable as excess profits duty, super-tax shall alone be charged,

and the provisions of this Act and the Super-tax Act, 1917, shall be construed accordingly.

20. The amount of excess profits duty paid in respect of any business shall be allowed as a deduction at the adjustment made in the year ending on the 31st March, 1920, in respect of the profits of that business for the purposes of Section 19 of the Indian Income-tax Act, 1918:

Excess profits duty and super-tax to be alternately chargeable.

business shall be allowed as a deduction at the adjustment made in the year ending on the 31st March, 1920, in respect of the profits of that business for the purposes of Section 19 of the Indian Income-tax

Provided that, if the amount of excess profits duty payable has not been ascertained at the time when the said adjustment is made, the amount by which the income-tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty.

SCHEDULE I.

EXCEPTED BUSINESSES.

(See Section 3.)

1. Any business the income from which is agricultural income.
2. Offices or employments.
3. Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession

is carried on, and in which no capital expenditure is required or only capital expenditure of an amount which is small when compared with the profits which the person carrying on the profession makes ;

Provided that the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description (not being a whole-time officer or servant of the business or a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not dependent on the amount of business done or any other contingency) shall not be included in this exception.

4. Any business which is liable to pay in respect of the accounting period excess profits duty in the United Kingdom.

5. Any business of which the profits in the accounting period do not exceed thirty thousand rupees.

SCHEDULE II.

ASCERTAINMENT OF CAPITAL.

(See Section 6.)

1. The amount of the capital of a business shall, so far as it does not consist of money, be taken to be—

(a) so far as it consists of assets acquired by purchase, the price at which these assets were acquired, subject to any proper deduction for depreciation or for unpaid purchase money,

(b) so far as it consists of assets being debts due to the business, the nominal amount of those debts subject to any reduction which has been allowed or is allowable in respect of those debts under the Indian Income-tax Act, 1918, and

(c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the business, subject to any proper deduction for depreciation :

Provided that nothing in this provision shall prevent accumulated profits (other than those made in the accounting period) employed in the business being treated as capital.

2. Any borrowed money or trade debts shall be deducted in computing the amount of capital for the purposes of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where the business has been converted into a company and more than two-thirds of the shares in the company are held by the person who was the owner of the business no value shall be attached to those shares, so far as they are represented by goodwill or otherwise than by material assets of the company, unless the Collector in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.

EXCESS PROFITS TAX (AMENDMENT) ACT, 1940.

Act No. XLII of 1940.

*(Received the assent of the Governor-General
on 3rd December 1940).*

An Act to amend the Excess Profits Tax Act, 1940.

Whereas it is expedient to amend the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing;

It is hereby enacted as follows :—

1. (1) This Act may be called the Excess Profits Tax (Amendment) Act, 1940.

Short title, commencement and effect.

(2) It shall come into force at once; but its provisions shall be deemed to have taken effect on the day on which the Excess Profits Tax Act, 1940, came into force.

2. In clause (21) of Section 2 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), for sub-clause (b) the following sub-clauses shall be substituted, namely :—

Amendment of Section 2, Act XV of 1940.

“ in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum :”.

3. In sub-section (3) of Section 6 of the said Act, after the word and figure “Section 13” the following words shall be inserted, namely :—

Amendment of Section 6, Act XV of 1940.

“or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section”

and to the sub-section the following proviso shall be added, namely :—

“Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.”

Amendment of Section 8, Act XV of 1940.

4. In Section 8 of the said Act,—

(a) in sub-section (3), after the words “in computing the capital employed in the business after the

change," and in sub-section (4), after the words "in computing the capital employed in the resulting business" the following words shall be inserted, namely :—

"and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,";

(b) in sub-section (5), the words "subject to any necessary modifications" shall be omitted ;

(c) in sub-section (6), the words "subject, however, to such modifications (including modifications as respects the computation of capital) as he may consider just" shall be omitted ;

(d) after sub-section (7) the following sub-section shall be added, namely :—

"(8) Where—

(a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued ; or

(b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business ; or

(c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business ; or

(d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Act Officer ".

Amendment of Section 9, Act XV of 1940. 5. After sub-section (1) of Section 9 of the said Act the following sub-section shall be inserted namely :—

"(1A) Where—

(a) any debt is owing to any company by another company ; and

(b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company ; and

(c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to

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continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist ”.

6. In sub-section (2) of Section 12 of the said Act,—

Amendment of (a) for the words “to the extent that such profits
Section 12, Act XV arose in the said country ” the words “to the extent
of 1940. to which such profits are liable to excess profits tax
under this Act ” shall be substituted ;

(b) in the proviso, for the words “chargeable accounting period”, where those words occur for the second time, the following shall be substituted, namely :—

“previous year (as determined for that business for the purposes of the Indian Income tax Act, 1922) ”.

Amendment of 7. For the second proviso to sub-section (1) of
section 17, Act XV Section 17 of the said Act the following shall be sub-
of 1940. stituted, namely :—

“Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of Section 8, against any modifications made by the Excess Profits Tax Officer under sub-section (8) of Section 8, against any decision of the Excess Profits Tax Officer under Rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue ”.

Amendment of 8. In Section 26 of the said Act,—

Section 26, Act XV (a) in sub-section (1) and in sub-section (3),
of 1940. after the word “If ” the following words shall be
inserted, namely :—

“on an application made to it through the Excess Profits Tax Officer ”;

(b) to sub-section (1) the following proviso shall be added, namely :—

“Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods ;

(b) shall exclude any further application under this sub-section ”;

(c) after sub-section (3) the following sub-section shall be added, namely :—

“(4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of Section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of Section 6, the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the

date on which the order of the Board of Referees disposing of the application under sub-section (3) of Section 6 is communicated to the person who has made that application ”.

Amendment of Schedule I, Act XV of 1940. 9. In Schedule I to the said Act,—
(a) in rule 1, in the first proviso, after the word “Provided” the word “further” shall be inserted, and before that proviso, as so amended, the following proviso shall be inserted, namely:

“Provided that any sums excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax:”;

(b) in rule 4,—

(i) in sub-rule (1) after the brackets and figure “(2)” the brackets, figure and letter “(2A)” shall be inserted;

(ii) after sub-rule (2) the following sub-rule shall be inserted, namely:—

“(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.”;

(iii) in sub-rule (3), after the brackets and figure “(2)” the word, brackets, figure and letter “or (2A)” shall be inserted;

(c) in rule 7,—

(i) for sub-rule (1) the following sub-rule shall be substituted, namely:—

“(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

(a) in computing the profits for that accounting period; and

(b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of director’s remuneration.”;

(ii) in sub-rule (2), for the words “In this rule” the words, brackets and figure “In sub-rule (1) of this rule” shall be substituted;

(iii) after sub-rule (2) the following sub-rule shall be added, namely:—

“(3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

(a) have during any part of that accounting period, or

(b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors's remuneration either in computing the profits for the first mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any).";

(d) after rule 10, the following rule shall be added, namely :—

" 11. Where in respect of any accounting period a deduction would apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer."

10. In Schedule II to the said Act,—

Amendment of
Schedule II, Act XV
of 1940.

(a) in sub-rule (2) of rule 1, after the words "written down value" the following words shall be inserted, namely :—

"and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax";

(b) at the end of sub-rule (1) of rule 2 the following shall be inserted, namely :—

"The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable";

(c) after rule 6 the following rule shall be added, namely :—

" 7. (1) If—

(a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by

reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

(b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of Section 6, or of the Central Board of Revenue under sub-section (1) of Section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of Section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly."

EXCESS PROFITS TAX (AMENDMENT) ACT, 1941.

(Act No. XI of 1941).

(Received the assent of the Governor-General on 31st March 1941).

An Act further to amend the Excess Profits Tax Act, 1940.

Whereas it is expedient further to amend the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing :

It is hereby enacted as follows :—

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| <p>Short title.</p> <p>Amendment of Section 2, Act XV of 1940.</p> | <p>1. This Act may be called the Excess Profits Tax (Amendment) Act, 1941.</p> <p>2. In Section 2 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), after clause (16) the following clause shall be inserted, namely :—</p> |
|--|--|

'(16A) " ordinary share capital " has the meaning assigned to that expression in sub-section (8) of Section 9 ; '.

Amendment of Section 4, Act XV of 1940. 3. Section 4 of the said Act shall be re-numbered as sub-section (1) of that section, and to the section as so re-numbered the following sub-section shall be added, namely :—

“(2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period; and any apportionment required to be made by this sub-section shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period”.

Amendment of Section 7, Act XV of 1940. 4. To Section 7 of the said Act the following provisos shall be added, namely :—

“Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

(a) the application shall be treated as provisional only; and

(b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct :

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.”

Amendment of Section 17, Act XV of 1940. 5. In sub-section (1) of Section 17 of the said Act,—
(a) in the first proviso, for the words “first proviso” the words “second proviso” shall be substituted;

(b) in the second proviso, for the word "modifications" the following words shall be substituted, namely :—

" refusal to make modifications or against any modifications ".

6. In the first proviso to rule 1 of the First Schedule to the said Act, after the words " Provided that any sums " the brackets and words " (other than any interest paid by a firm to a partner of the firm) " shall be inserted and shall be deemed always to have been inserted.

Amendment of
Rule 1, First Schedule,
Act XV of
1940.

EXCESS PROFITS TAX (SECOND AMENDMENT) ACT, 1941.

*(Received the assent of the Governor-General
on the 26th November 1941.)*

ACT NO. XXIV OF 1941.

An Act further to amend the Excess Profits Tax Act, 1940.

Whereas it is expedient further to amend the Excess Profits Tax Act, 1940, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

Short title and commencement. 1. (1) This Act may be called the Excess Profits Tax (Second Amendment) Act, 1941.

(2) It shall come into force at once; but effect shall not be given to the amendment hereby made in the Excess Profits Tax Act, 1940, by Section 3 in the making of any assessment under that Act in respect of any chargeable accounting period which is a " previous year " for an assessment under the Indian Income-tax Act, 1922, for any year before the year ending on the 31st day of March, 1943.

2. In sub-section (2) of Section 4 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), for the words beginning with " and as if the excess of profits " and ending with " the whole chargeable accounting period " the following shall be substituted, namely :—

" and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of Section 7A ".

3. In Section 5 of the said Act, after the second proviso the following proviso shall be added, namely :—

" Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State ; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise

Amendment of
Section 4, Act XV
of 1940.

Amendment of
Section 5, Act XV
of 1940.

in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business."

Insertion of new
Section 7A in Act
XV of 1940.

4. After Section 7 of the said Act the following section shall be inserted, namely:—

"7A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of Section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section, shall be determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sub-sections—

Special provision
for chargeable ac-
counting period
falling partly be-
fore and partly
after the end of
March, 1941.

(a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March;

(b) "excess profits" means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that rule 5A of the First Schedule and rule 2A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under Section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the parts of the whole period."

Substitution of
new section for Sec-
tion 10, Act XV of
1940.

5. For Section 10 of the said Act the following section shall be substituted, namely:—

"10. (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears

Artificial trans-
actions.

that the transaction or operation has artificially reduced or would artificially reduce the profits.

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded."

Insertion of new
Section 10A in Act
XV of 1940.

6. After Section 10 of the said Act the following section shall be inserted, namely :—

" 10A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected [whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions ;

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

(a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent ;

(b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal."

Amendment of
Section 26, Act XV
of 1940.

7. In sub-section (3) of Section 26 of the said Act, after clause (c) the following word and clause shall be inserted, namely :—

" or

(d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased wartime output the source of the mineral might have been expected to be exhausted ; "

Amendment of
Schedule I, Act XV
of 1940.

8. In Schedule I to the said Act,—

(a) after rule 5 the following rule shall be inserted, namely :—

'5A. (1) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of Section 7A of this Act :

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of Section 6 of this Act :

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of Section 6, or by the Central Board of Revenue under sub-section (1) of Section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 2A of the Second Schedule " borrowed money " means borrowed money which, apart from the provisions of the said rule 2A, would have been deductible in computing capital. ' ;

(b) after rule 11 the following rule shall be added, namely :—

" 12. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal.

Amendment of
Schedule II, Act
XV of 1940.

9. In Schedule II to the said Act,—

(a) after rule 2 the following rule shall be inserted, namely :—

" 2A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of Section 7A of this Act:

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.”;

(b) in rule 6, for the words “second proviso” the words “second or third proviso” shall be substituted.

INCOME-TAX AND EXCESS PROFITS TAX (EMERGENCY) ORDINANCE 1942.

ORDINANCE NO. LX OF 1942.

Dated the 14th November, 1942.

AN ORDINANCE

To remove certain difficulties caused by the destruction of documents and records pertaining to the collection of Income-tax and Excess Profits Tax.

Whereas an emergency has arisen which makes it necessary to remove certain difficulties caused by the destruction of documents and records pertaining to the collection of Income-tax and Excess Profits Tax;

Now, therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942.
Short title and commencement.

(2) It shall come into force at once.

2. (1) Where documents or records pertaining to the assessment, collection or payment of income-tax or excess profits tax have been damaged, lost or destroyed as a result of riot or civil commotion, the authority authorised under the Indian Income-tax Act, 1922, or the Excess Profits Tax Act, 1940, as the case may be, to issue any notice for any of the purposes of either Act, may, notwithstanding anything contained in either of the said Acts, and notwithstanding that such notice has already been issued, or has already been issued and has been or is alleged to have been complied with, or, where such notice has already been issued, that the time within which the notice is to be issued has already expired, may reissue such notice, and any notice so reissued shall in all respects have the same effect as if it were the original notice, and any proceedings that could have been taken in pursuance of or subsequent to the original notice may be taken in like manner in pursuance of or subsequent to the notice so reissued:

Provided that in respect of assessments or reassessments made in the course of any proceedings taken under the powers conferred by this sub-section the periods of eight and four years mentioned in sub-section (2) of Section 34 of the Indian Income-tax Act, 1922, shall be deemed to commence on and to run from the date on which the notice under sub-section (2) of Section 22 or sub-section (1) of Section 34 of that Act is reissued under the powers conferred by this sub-section :

Provided further that where a person proves to the satisfaction of the Income-tax Officer or the Excess Profits Tax Officer, as the case may be, that he has already been assessed in respect of the income or the excess profits in respect of which notices under Section 22 or Section 34 of the Indian Income-tax Act, 1922, or under Section 13 or Section 15 of the Excess Profits Tax Act, 1940, have been reissued, and that he has paid the tax, he shall not be subject to fresh assessment.

(2) Any return or information required or which could be required under the provisions of either of the said Acts to be furnished by any person shall, if the Income-tax Officer or the Excess Profits Tax Officer so requires at any time, be again furnished by such person notwithstanding that it may have been or is alleged to have been already furnished, and any failure to comply with any such requirement by an Income-tax Officer or Excess Profits Tax Officer shall involve the same consequences as if the return or information had been altogether withheld.

3. If any question arises whether a document or record has been Settlement of doubts. damaged, lost or destroyed as a result of riot or civil commotion, the matter shall be referred to the Commissioner of Income-tax or to the Commissioner of Excess Profits Tax, as the case may be, and his decision shall be final.

4. The Central Government may make rules providing for any Power to make rules. matter necessary to carry into effect the purposes of this Ordinance.

EXCESS PROFITS TAX ORDINANCE, 1943.

ORDINANCE No. XVI OF 1943.

An Ordinance

to make certain provisions in connection with the tax on excess profits.

Whereas an emergency has arisen which renders it necessary to make certain provisions in connection with the tax on excess profits;

Now, therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance :—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Excess Profits Tax Ordinance, 1943.

- (2) It extends to the whole of British India.
 (3) It shall come into force at once.

2. Deposits in connection with payments of excess profits tax.—(1)

When excess profits tax charged under the provisions of the Excess Profits Tax Act, 1940 (XV of 1940), in respect of any chargeable accounting period ending after the 31st day of December, 1942, becomes payable under that Act after assessment made under Section 14 of that Act, the person liable to pay such excess profits tax shall deposit with the Central Government, before such date as may be specified in a notice in this behalf in such form as may be prescribed by rules made under sub-section (5) issued to him by the Excess Profits Tax Officer, a further sum equal to one-fifth of the amount of the said excess profits tax; and the provisions of Section 10 of the Indian Finance Act, 1942 (XII of 1942), shall, save in so far as they are inconsistent with this section, apply in respect of such deposits as they apply in respect of the voluntary deposits for which provision is made in the said Section 10:

¹[Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1943, the provisions of this sub-section shall have effect as if, in relation to any person who is a company, for the words 'one-fifth' the words 'nineteen-sixtyfourths' were substituted and as if, in relation to any other person, for the words 'one-fifth' the words 'seventeen-sixtyfourths' were substituted:

Provided further that if, in respect of any chargeable accounting period ending after the 31st day of December, 1943, a person who has deposited a further sum equal to seventeen-sixtyfourths of the excess profits tax payable shows that the amount of the income-tax and super-tax payable in respect of the excess profits arising in such period exceeds fifteen-sixtyfourths of the amount of the excess profits tax payable, so much of the deposit shall be refunded as will secure that the total of the deposit made and the income-tax and super-tax payable in respect of the excess profits arising in such period does not exceed one-half of the excess profits tax payable.]

²[(1A) In respect of any chargeable accounting period ending after the 31st day of December, 1943, in respect of which a provisional assessment of excess profits tax is made under Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940), the person liable to pay such excess profits tax shall deposit in the manner laid down in sub-section (1) a further sum equal to nineteen-sixtyfourths of the amount of the said excess profits tax if such person is a company and seventeen-sixtyfourths of the said amount if such person is not a company; and the provisions of sub-sections (6) and (7) of the said Section 14A shall apply to any payment made under this sub-section as they apply to a payment of excess profits tax.];

(2) The provisions of sub-section (1) of Section 10 of the Indian Finance Act, 1942 (XII of 1942), in so far as they enable the making of voluntary deposits, shall cease to have effect except in relation to

(1) These provisos were added by the Indian Finance Act, 1944.

(2) This sub-section was inserted by *ibid*

excess profits tax charged in respect of a chargeable accounting period ending on the 31st day of December, 1942, or earlier.

(3) Any further sum such as is referred to in sub-section (1) deposited in accordance with that sub-section shall be repaid by the Central Government within twelve months of the date of termination of the present hostilities or within twenty-four months of the date on which the deposit was made, whichever is later.

(4) The provisions of law applicable to the payment and recovery of excess profits tax contained in Sections 45 and 46 [except sub-sections (1) and (1A) thereof] of the Indian Income-tax Act, 1922 (XI of 1922), as applied by Section 21 of the Excess Profits Tax Act, 1940 (XV of 1940), shall apply to the payment and recovery of the deposits required by ¹ [sub-section (1) or (1a) of this section] as if the notice referred to in sub-section (1) of this section were a notice of demand under Section 29 of the Indian Income-tax Act, 1922 (XI of 1922), and as if a default in making payment of such deposit were a default in making payment of excess profits tax.

(5) The power to make rules for carrying out the purposes of Section 10 of the Indian Finance Act, 1942 (XII of 1942), conferred by sub-section (3) of that section shall include a power to make rules for carrying out the purposes of this section.

3. Insertion of new Section 14A in Act XV of 1940.—After Section 14 of the Excess Profits Tax Act, 1940 (XV of 1940), the following section shall be inserted, namely :—

“14A. Power to make provisional assessments—(1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under Section 14, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of Section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

(1) These words were substituted for the words “sub-section (1) of this section” by the Indian Finance Act, 1944.

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiencies of profits have not been determined under sub-section (1) of Section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under Section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 per cent. per annum calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive."

4. *Amendment of rule 12, Schedule I, Act XV of 1940.*—In the First Schedule to the Excess Profits Tax Act, 1940 (XV of 1940), to rule 12 the following sub-rule shall be added, namely :—

"(3) In relation to chargeable accounting periods ending after the 31st day of December, 1942, the Central Government may make rules for determining the extent to which deductions shall be allowed in respect of bonuses or commissions paid."

5. *Amendment of rule 3, Schedule II, Act XV of 1940.*—In the Second Schedule to the Excess Profits Tax Act, 1940 (XV of 1940), rule 3 shall be renumbered as sub-rule (1) of rule 3 and—

(a) in the rule as so renumbered after the words "any moneys" the words "or as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stock of raw materials" shall be inserted ;

(b) the following shall be added as sub-rule (2), namely :—

"(2) The Central Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials."

EXCESS PROFITS TAX (AMENDMENT) ORDINANCE, 1944.

ORDINANCE NO. VIII OF 1944

AN

ORDINANCE*further to amend the Excess Profits Tax Act, 1940.*

Whereas an emergency has arisen which makes it necessary further to amend the Excess Profits Tax Act, 1940 (XV of 1940), for the purpose hereinafter appearing ;

Now, therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following ordinance :—

1. *Short title and commencement.*—(1) This Ordinance may be called the Excess Profits Tax (Amendment) Ordinance, 1944.

(2) It shall come into force at once.

2. *Amendment of Section 4 (1) Act XV of 1940.*—In sub-section (1) of Section 4 of the Excess Profits Tax Act, 1940 (XV of 1940), after the proviso, the following proviso shall be added, namely :—

“ Provided further that, in the case of any business which includes the mining of any mineral, any bonus paid by or through the Central Government in respect of increased output of the mineral shall be totally exempt from excess profits tax under this Act.”

ADDENDA**EXCESS PROFITS TAX RULES, 1940****SCHEDULE****¹FORM E. P. 4-7A***Excess Profits Tax.*

Assessment Order and Notice of Demand in respect of Provisional Assessments made under sub-section (3) of Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940), and sub-section (1A) of Section 2 of the Excess Profits Tax Ordinance, 1943 (No. XVI of 1943) read with Section 10 of the Indian Finance Act, 1942 (XII of 1942).

To

.....

1. Take Notice that, following the issue on.....194 , of notice under sub-section (2) of Section 14A of the Excess Profits Tax Act, 1940 (XV of 1940) of my intention to make a provisional

1. This form was inserted in the Schedule annexed to the Excess Profits Tax Rules, 1940 by Notification No. 8 dated the 8rd June 1944.

assessment in respect of your liability to excess profits tax for the chargeable accounting period commencing.....194 , and ending.....194 , which would carry the liability also to deposit a further sum under sub-section (1A) of Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943), read with Section 10 of the Indian Finance Act, 1942 (XII of 1942), I, having taken into account your statement of objections thereto dated.....194 , have determined provisionally the excess profits of such period to be the sum of Rs. and that the excess profits tax payable in respect thereof and the further sum to be deposited in relation thereto are:—

Excess Profits Tax Rs. @66 $\frac{2}{3}$ % = Rs.

Further sum to be deposited */64 of =

Total

2. You are required to pay the amount on or before.....

.....194 , to
 †Treasury Officer
 Sub-Treasury Officer
 Agent, Imperial Bank of India
 Governor, Reserve Bank of India.
 at.....when you will be granted a receipt.

3. If you do not pay the amount on or before.....194 , you will be liable to a penalty under Section 46 (1) of the Indian Income-tax Act, 1922 (XI of 1922) as applied to Excess Profits Tax Act, 1940, and as applied to the further sum required to be deposited by sub-section (4) of Section 2 of the Excess Profits Tax Ordinance, 1943, which may be as great as the amount of the Excess Profits Tax hereby assessed and the further sum required hereby to be deposited.

.....
 Excess Profits Tax Officer.

..... } Address
 }

Dated.....194 .

*Insert ' 19 ' or ' 17 ' as the case requires.

†Delete inappropriate words.

**EXCESS PROFITS TAX (COMPUTATION OF PROFITS AND CAPITAL)
RULES, 1943 (DRAFT).**

Notification No. 10 dated the 27th November 1943.

The following draft of certain rules which the Central Government proposes to make in exercise of the powers conferred by sub-rule (3) of Rule 12 of Schedule I and sub-rule (2) of Rule 3 of Schedule II of the Excess Profits Tax Act, 1940 (XV of 1940) is published for the information of persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 10th January 1944.

Any objection or suggestion which may be received from any person in respect of the said draft before the date specified will be considered by the Central Government.

Draft Rules.

1. (1) These Rules may be cited as the Excess Profits Tax (computation of profits and capital) Rules, 1943.

(2) They apply to the whole of British India and to the Excluded and Partially Excluded Areas to which the Excess Profits Tax Act, 1940 (XV of 1940) has been or may hereafter be applied.

2. In these Rules—

(i) "the Act" means the Excess Profits Tax Act, 1940 (XV of 1940);

(ii) "bonus" means any remuneration payable to any employee other than wages, salary or commission;

(iii) "dearness allowance" means any bonus payable to any employee to compensate for the increased cost of living;

(iv) "manual wage earner" means any wage-earner employed by way of manual labour and does not apply to any persons employed as clerks, typists, draftsmen or in any similar capacity;

(v) "wages" means any remuneration payable to a manual wage-earner except by way of dearness allowance or bonus;

(vi) "cost of living" means, in relation to any period, the proportionate cost, in relation to a common base as shown for that period by the Cost of living Index published by the Provincial Government and appropriate to the area in which the manual wage-earner resides.

3. In applying the provisions of Rule 12 of Schedule I of the Act to the computation of the profits of any chargeable accounting period—the sum to be allowed in respect of any bonus paid after the 30th November 1943 to any manual wage-earner, other than a dearness allowance, shall not exceed the sum of one quarter of the wages for the period in respect of which the bonus is paid.

4. In applying the provisions of Rule 12 of Schedule I of the Act to the computation of the profits of any chargeable accounting period—

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RULES, 1943 (DRAFT)

the sum to be allowed in respect of any dearness allowance paid to any employee after the 30th November 1943 shall not exceed—

(i) in the case where the salary or wages, in respect of which the dearness allowance is paid, are paid at the rate of Rupees 25 per month such a sum as, added to the amount of the salary or wages, bears to the amount of the salary or wages the same proportion as the cost of living for the period in respect of which such salary or wages are paid bears to the cost of living for the year ended 31st December 1939;

(ii) in the case where the salary or wages, in respect of which the dearness allowance is paid, are paid at the rate of less than Rupees 25 per month the sum that would be allowable if such salary or wages were paid at the rate of Rupees 25 per month;

(iii) in the case where the salary or wages, in respect of which the dearness allowance is paid, are paid at a rate exceeding Rupees 25 but not exceeding Rupees 60 per month

(a) the sum that would have been appropriate if the salary or wages had been paid at the rate of Rupees 25 per month only, plus

(b) in respect of such part of the salary or wages as represents payment at the rate of more than Rupees 25 per month three-quarters of the sum that would be allowed if such part had represented salary or wages paid at the rate of Rupees 25 per month;

(iv) in the case where the salary or wages, in respect of which the dearness allowance is paid, are paid at a rate exceeding Rupees 60 per month—

such part of the dearness allowance that would be allowed in the case of salary or wages paid at the rate of Rupees 60 per month as, added to the amount of the salary or wages, will not give a total which exceeds the rate of Rupees 300 per month:

Provided that where the employer provides food or other essential articles of consumption for an employee at rates less than the retail rates current in the locality in which the employee resides the cash value of such provision as estimated by the Excess Profits Tax Officer shall be treated as a dearness allowance.

5. In relation to chargeable accounting periods commencing after the 31st December 1942, payments in respect of bonuses and commission, exclusive of dearness allowances, payable to persons other than manual wage-earners and persons carrying on business within the definition of sub-section (5) of Section 2 of the Act, shall be deemed to be unreasonable and unnecessary if and to the extent to which they exceed—

(i) in the case of a business the standard profits of which are computed by reference to the profits of a standard period,

(a) twice the sum that bears to the amount of such payments in the standard period the same proportion that the length of the chargeable accounting period bears to the length of the standard period, or

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RULES, 1943 (DRAFT)

(b) one per cent of the amount of the profits of the chargeable accounting period as computed for the purpose of assessment to excess profits tax, whichever is the greater ;

(ii) in the case of any other business, one per cent of the amount of the profits of the chargeable accounting period as computed for the purposes of assessment to excess profits tax.

6. In applying the provisions of Rule 3 of Schedule II of the Act, in respect of trading stocks or stocks of raw materials, as the case may be, to the computation of the average capital during any chargeable accounting period commencing after the 31st December 1942—

there shall be ascertained by the Excess Profits Tax Officer the sum that bears to the sales of the business during such period the same proportion as the average amount of capital represented by such stocks during the standard period, if any, bears to the sales of the business during the standard period, and the excess, if any, of the average capital so represented during the chargeable accounting period over that sum shall be left out of account.

Provided that in the case of a business in which there is no standard period the sum to be left out of account shall be computed by reference to the proportion borne by such stocks to total sales in the case of similar businesses during their standard periods.

Provided further that no sum shall be left out of account under this Rule without the previous approval of the Inspecting Assistant Commissioner.

Provided further that where the Inspecting Assistant Commissioner is satisfied that the whole or any part of the excess was, owing to special circumstances, necessarily held for the requirements of the business the sum to be left out of account shall be correspondingly reduced.

RELIEF FROM DOUBLE EXCESS PROFITS TAX (BRITISH INDIA) DECLARATION, 1941

Whereas it is provided by sub-section (1) of section thirty of the Finance Act, 1940, that His Majesty may by Order in Council declare that—

(a) under the law in force in any part of His Majesty's dominions outside the United Kingdom excess profits tax is payable in respect of any profits in respect of which excess profits tax is, or, if there were no national defence contribution, would be, payable also under the law in force in the United Kingdom; and

(b) arrangements have been made with the Government of that part of His Majesty's dominions providing for the giving of relief from double taxation in respect of such profits in accordance with the principles in the said sub-section set out:

And whereas it is provided by section four of the Act of the Indian Legislature known as the Excess Profits Tax Act, 1940, that there shall, in respect of any business therein mentioned, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (therein referred to as excess profits tax) which shall in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act:

And whereas it is provided by sub-section (2) of section eight of an Act of the Indian Legislature known as the Indian Finance Act, 1941, that the excess profits tax imposed by section four of the said Excess Profits Tax Act, 1940, shall in respect of any chargeable accounting period beginning after the 31st day of March, 1941, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits:

And whereas such arrangements as are hereinafter mentioned have been made between His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of India:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to declare, and it is hereby declared, that—

(a) under the law in force in British India excess profits tax is payable in respect of certain profits in respect of which excess profits tax is, or, if there were no national defence contribution, would be, payable also under the law in force in the United Kingdom; and

(b) arrangements have been made with the Government of India providing for the giving of relief from double taxation in respect of such profits in accordance with the following principles:—

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DECLARATION, 1941

(i) that there shall be computed the amount of excess profits tax which would be payable in the territory of the United Kingdom and in the territory of British India if excess profits tax in the other territory, and national defence contribution in the United Kingdom, were disregarded except in computing capital ;

(ii) that such amount of relief from tax shall be given in each territory as bears to the lower of the two amounts so computed the same proportion as the amount so computed for that territory bears to the sum of the two amounts so computed ; and

(iii) that where the amount so computed for either territory is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason) the amount so computed shall be recalculated and the relief in both territories varied accordingly.

And His Majesty is further pleased to order, and it is hereby ordered, that this Declaration may be cited as "The Relief from Double Excess Profits Tax (British India) Declaration, 1941 ".

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